
TEXAS REGISTER

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School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for July 5, 2011

Appointed to the Texas Higher Education Coordinating Board for a term to expire August 31, 2011, James H. Lee of Houston (replacing Elaine Mendoza of San Antonio who resigned).

Appointed to the Board of Pardons and Paroles for a term to expire February 1, 2017, James W. "Jim" LaFavers of Amarillo (replacing Charles Aycock of Amarillo whose term expired).

Appointed to the Board of Pardons and Paroles for a term to expire February 1, 2017, Michelle M. Skyrme of Hallsville (replacing Jackie DeNoyelles of Flint whose term expired).

Appointed to the Texas Bioenergy Policy Council for a term to expire January 1, 2013, Bruce E. Bagelman of Dallas (Mr. Bagelman is being reappointed).

Appointed to the Texas Bioenergy Policy Council for a term to expire January 1, 2013, Michael Doguet of Nome (Mr. Doguet is being reappointed).

Appointed to the Texas Bioenergy Policy Council for a term to expire January 1, 2013, Michael C. Kerby, Jr. of Houston (replacing Kevin Murphy of Dallas whose term expired).

Appointed to the Texas Bioenergy Policy Council for a term to expire January 1, 2013, Jeffrey M. Trucksess of Houston (Mr. Trucksess is being reappointed).

Appointed to the Upper Guadalupe River Authority for a term to expire February 1, 2017, David M. "Mike" Hughes of Ingram (replacing Karol Schreiner of Hunt whose term expired).

Appointed to the Permanent Judicial Commission for Children, Youth, and Families for a term at the pleasure of the Governor, Gabriela Fuentes of Austin (replacing Kristi Jordan of Austin who no longer qualifies).

Appointed to the Interstate Oil and Gas Compact Commission for a term at the pleasure of the Governor, Commissioner David J. Porter of Austin.

Designating Richard Wendt, III as presiding officer of the Texas Board of Licensure for Professional Medical Physicists for a term at the pleasure of the Governor. Dr. Wendt is replacing Philip Bourland of Temple as presiding officer.

Designating Nizam Peerwani as presiding officer of the Texas Forensic Science Commission for a term at the pleasure of the Governor. Dr. Peerwani is replacing John Bradley of Georgetown as presiding officer.

Appointed as Judge of the 356th Judicial District Court, Hardin County for a term until the next General Election and until his successor shall be

duly elected and qualified, Steven R. Thomas of Kountze. Mr. Thomas is replacing Judge Britton Plunk who is deceased.

Appointed to the Continuing Advisory Committee for Special Education for a term to expire February 1, 2013, Geralda Morales-Whitemore of Brownsville (replacing Candace Hawks of Belton who no longer qualifies).

Appointed to the Continuing Advisory Committee for Special Education for a term to expire February 1, 2013, Myeshi Williams-Briley of Spring (replacing Pamela Willson of Brooksmith who resigned).

Appointed to the Continuing Advisory Committee for Special Education for a term to expire February 1, 2015, Melissa C. Keller of Lake-way (replacing Kathy Grant of Houston whose term expired).

Appointed to the Continuing Advisory Committee for Special Education for a term to expire February 1, 2015, Gwyn A. Boyter of Austin (replacing Lene' Al-Rashid of Austin whose term expired).

Appointed to the Continuing Advisory Committee for Special Education for a term to expire February 1, 2015, Susan A. "Stormi" Johnson of Palestine (replacing Drusilla Knight-Villarreal of Corpus Christi whose term expired).

Appointed to the Continuing Advisory Committee for Special Education for a term to expire February 1, 2015, Nagla Moussa of Plano (replacing Shewanda Williams of Houston whose term expired).

Appointed to the Continuing Advisory Committee for Special Education for a term to expire February 1, 2015, Heather N. Pulido of Fort Worth (replacing Marnie Mast of Austin whose term expired).

Appointed to the Executive Committee of the Texas Office for the Prevention of Developmental Disabilities for a term to expire February 1, 2017, Marian Sokol of San Antonio (Dr. Sokol is being reappointed).

Appointed as Justice of the First Appellate District, Place 9, for a term until the next General Election and until her successor shall be duly elected and qualified, Rebeca Aizpuru Huddle of Bellaire. Ms. Huddle is replacing Justice Elsa Alcala who vacated office.

Appointed as Justice of the Eleventh Appellate District, Place 2, for a term until the next General Election and until his successor shall be duly elected and qualified, Daniel "Eric" Kalenak of Midland. Mr. Kalenak is replacing Justice Rick Strange who resigned.

Appointed as the Texas State Board of Education Chair for a term to expire February 1, 2013, Barbara Cargill of The Woodlands (replacing Gail Lowe of Lampasas).

Rick Perry, Governor

TRD-201102664



EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034).

TITLE 22. EXAMINING BOARDS

PART 18. TEXAS STATE BOARD OF PODIATRIC MEDICAL EXAMINERS

CHAPTER 371. EXAMINATION AND LICENSURE

22 TAC §371.3

The Texas State Board of Podiatric Medical Examiners adopts emergency amendments to §371.3, concerning Fees. The emergency amendments to §371.3 are being adopted to allow for cost recovery for processing special requests exceeding standard application/service costs and to cover the contingent revenue as stipulated by the 82nd Texas Legislature which requires the board to assess or increase fees sufficient to generate during the FY 2012-2013 biennium \$21,634 in excess of \$960,000 (Object Code 3562), contained in the Comptroller of Public Accounts biennial revenue estimate for FY 2012-2013. Texas Occupations Code §202.153, Fees, states that the board by rule shall establish fees in amounts reasonable and necessary to cover the cost of administering this chapter. The reason for the emergency, in response to Texas Online and Texas Department of Information Resources schedules, is that the fee increase (also for USAS changes) must be in place by Friday, July 15, 2011 for the November 1, 2011 (online) license renewal deadline.

The emergency amendments are being adopted under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the laws of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry.

The emergency amendment for §371.3 implements Texas Occupations Code §202.153, Fees.

§371.3. Fees.

(a) The fees set by the Board and collected by the Board must be sufficient to meet the expenses of administering the Podiatric Medical Practice Act, subsequent amendments, and the applicable rules and regulations.

(b) Fees are as follows:

- (1) Examination--\$250 plus \$39 fee for HB660 (criminal history record information)
- (2) Re-Examination--\$250 plus \$39 fee for HB660 (criminal history record information)
- (3) Temporary License--\$125

- (4) Extended Temporary License--\$50
- (5) Temporary Faculty License--\$40
- (6) Provisional License--\$125
- (7) Initial Licensing Fee--\$474 [§459] (i.e. \$469 [§454] plus \$5 Office of Patient Protection fee for HB2985 - 78th Session)
- (8) Annual Renewal--\$470 [§455] (i.e. \$469 [§454] plus \$1 Office of Patient Protection fee for HB2985 - 78th Session)
- (9) Renewal Penalty--as specified in Texas Occupations Code, §202.301(d)
- (10) Non certified podiatric technician registration--\$35
- (11) Non certified podiatric technician renewal--\$35
- (12) Hyperbaric Oxygen Certificate--\$25
- (13) Nitrous Oxide Registration--\$25
- (14) Duplicate License--\$50
- (15) Copies of Public Records--The charges to any person requesting copies of any public record of the Board will be the charge established by the appropriate state authority. The Board may reduce or waive these charges at the discretion of the Executive Director if there is a public benefit.
- (16) Statute and Rule Notebook--provided at cost to the agency
- (17) Duplicate Certificate--\$10
- (18) HB660 (criminal history record information)--\$39
- (19) Recovery Fee--An additional \$100 charge may be applied for processing special requests exceeding standard application/service costs (e.g. examination rescheduling, excessive/amended document reviews, obtaining legal/court documentation, criminal history evaluation letters, etc.).

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 7, 2011.

TRD-201102582

Janie Alonzo

Staff Services Officer V

Texas State Board of Podiatric Medical Examiners

Effective date: July 7, 2011

Expiration date: November 3, 2011

For further information, please call: (512) 305-7000

◆ ◆ ◆

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. ~~Square brackets and strikethrough~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 4. AGRICULTURE

PART 13. PRESCRIBED BURNING BOARD

CHAPTER 227. CERTIFICATION, RECERTIFICATION, RENEWAL AND RECORDS

SUBCHAPTER A. CERTIFICATION REQUIREMENTS

4 TAC §227.4

The Texas Prescribed Burning Board proposes to amend §227.4, concerning application and fees for the certified and insured prescribed burn manager program. The proposed amendment to §227.4 increases the application fee to \$500. This amendment is necessary to comply with changes made to the department's prescribed burn manager certification program by the 82nd Texas Legislature. The Legislature has required that all of the costs of administering this program be substantially offset by revenue generated for the program and has authorized the agency to collect fees accordingly. In order to meet this Legislative mandate, the department has first reviewed programs for cost savings and efficiencies, then restructured programs, as needed, to provide the best service possible at a reasonable cost to the regulated industry. An increase in fees is proposed for the program, so that the program may continue, under the cost recovery requirement imposed by the 82nd Legislature.

Jimmy Bush, assistant commissioner for pesticide programs, has determined that for the first five years the amended section is in effect, there will be fiscal implications for state government as a result of enforcing or administering the amended section, due to an increase in revenue resulting from the increase of the application fee. There will be an estimated increase in state revenue of \$30,500 per biennium for a two-year license. The increase in the application fee is necessary to enable the continued operation of a leaner, cost-efficient program due to a new Legislative requirement that this program generate revenue to substantially offset its costs. The ability of the department to enforce statutory requirements will be impacted if the department does not assess a fee that recovers the substantial cost of the program. There is no anticipated fiscal impact for local governments as a result of administering or enforcing amended section, as proposed.

Mr. Bush has also determined that for each year of the first five years the proposed amended section is in effect, the public benefit anticipated as a result of enforcing the amended section will be achieving effective recovery of the costs of administering the

prescribed burn manager certification program. The cost to individuals, micro-businesses and small businesses as a result of the amended section will be an application fee of \$500 for each prescribed burn manager applying for certification.

Comments on the proposal may be submitted to Jimmy Bush, Assistant Commissioner for Pesticide Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendment is proposed under the Natural Resources Code, §153.046, which provides the Board with the authority to establish standards for prescribed burning, and standards for certification, recertification, and training for prescribed burn managers; and §153.048 of the Natural Resources Code, which provides that a prescribed burn manager certification is for a two-year period, and an applicant must pay a fee to the board in an amount determined by the board.

The code affected by the proposal is the Texas Natural Resources Code, Chapter 153.

§227.4. *Application; Fees.*

(a) - (c) (No change.)

(d) Certification and renewal fees are \$500 [~~\$50.00~~] for a two-year license, contingent upon annual proof of insurance.

(e) - (f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 11, 2011.

TRD-201102625

Dolores Alvarado Hibbs

General Counsel, Texas Department of Agriculture

Prescribed Burning Board

Earliest possible date of adoption: August 21, 2011

For further information, please call: (512) 463-4075



TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 22. PROCEDURAL RULES

SUBCHAPTER D. NOTICE

16 TAC §22.52

The Public Utility Commission of Texas (commission) proposes amending §22.52, relating to notice in licensing proceedings. The amendment adds the requirement that notice for an application for a certificate of convenience and necessity (CCN) related to electric service be provided to the Office of Public Utility Counsel (OPUC), pursuant to Senate Bill 855 of the 82nd Legislature, Regular Session in 2011 (SB 855). Project Number 39518 is assigned to this proceeding.

Jason Haas, an attorney in the commission's Legal Division, has determined that for each year of the first five-year period the amendment is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Mr. Haas has determined that for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of enforcing the rule will be compliance with SB 855. There will be a small economic cost to persons who are required to comply with the amendment as proposed, and these costs are necessary to comply with SB 855. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the amendment. Therefore, no regulatory flexibility analysis is required.

Mr. Haas has also determined that for each year of the first five years the amendment is in effect, there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rule-making, if requested pursuant to APA, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. The request for a public hearing must be received by August 11, 2011.

Comments on the rule may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. Sixteen copies of comments on the rule are required to be filed pursuant to §22.71(c) of this title. Initial comments on the rule are due August 11, 2011 and reply comments are due August 18, 2011. Comments should be organized in a manner consistent with the organization of the amended rule. All comments should refer to Project Number 39518.

The amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2010) (PURA), which requires the commission to adopt and enforce rules reasonably required in the exercise of its power and jurisdiction; PURA §14.052 and Administrative Procedure Act (APA), Texas Government Code §2001.004 (Vernon 2008 & Supp. 2010), which require the commission to adopt procedural rules; and specifically, SB 855 §2 (to be codified as PURA §37.054), which requires that notice of a CCN application related to electric service be provided to OPUC.

Cross Reference to Statutes: PURA §14.002 and §14.052, APA §2001.004, and SB 855 §2 (to be codified as PURA §37.054).

§22.52. *Notice in Licensing Proceedings.*

(a) Notice in electric licensing proceedings. In all electric licensing proceedings except minor boundary changes, the applicant shall give notice in the following ways:

(1) (No change.)

(2) Applicant shall, upon filing an application, also mail notice of its application to municipalities within five miles of the requested territory or facility, neighboring utilities providing the same utility service within five miles of the requested territory or facility, and the county government(s) of all counties in which any portion of the proposed facility or requested territory is located. In addition, the applicant shall, upon filing the application, serve the notice on the Office of Public Utility Counsel using a method specified in §22.74(b) of this title (relating to Service of Pleadings and Documents). The notice shall contain the information as set out in paragraph (1) of this subsection and a map as described in paragraph (1)(C) of this subsection. An affidavit attesting to the provision of notice to municipalities, utilities, [and] counties, and the Office of Public Utility Counsel shall specify the dates of the provision of notice and the identity of the individual municipalities, utilities, and counties to which such notice was provided. Before final approval of any modification in the applicant's proposed route(s), applicant shall provide notice as required under this paragraph to municipalities, utilities, and counties affected by the modification which have not previously received notice. The notice of modification shall state such entities will have 20 days to intervene.

(3) - (7) (No change.)

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 8, 2011.

TRD-201102614

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: August 21, 2011

For further information, please call: (512) 936-7223



CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER D. RECORDS, REPORTS, AND OTHER REQUIRED INFORMATION

16 TAC §25.74

The Public Utility Commission of Texas (commission) proposes an amendment to §25.74, relating to Report on Change in Control, Sale of Property, Purchase of Stock, or Loan. Pursuant to House Bill 1753 of the 82nd Legislature, Regular Session in 2011 (HB 1753), the amendment increases from \$100,000 to \$10 million the total amount of consideration exchanged in a sale, acquisition, or lease of an operating unit or system above which a public utility is required to report the transaction to the commission. Project Number 39473 is assigned to this proceeding.

Slade Cutter, Senior Financial Analyst, Rate Regulation Division, has determined that for each year of the first five-year period the amendment is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Mr. Cutter has determined that for each year of the first five years the amendment is in effect, the public benefit anticipated as a

result of enforcing the amendment will be compliance with HB 1753. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the amendment. Therefore, no regulatory flexibility analysis is required. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Mr. Cutter has also determined that for each year of the first five years the amendment is in effect, there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the APA, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. The request for a public hearing must be received by August 11, 2011.

Comments on the rule may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. Sixteen copies of comments on the rule are required to be filed pursuant to §22.71(c) of this title. Initial comments on the rule are due August 11, 2011 and reply comments are due August 18, 2011. Comments should be organized in a manner consistent with the organization of the amended rule. All comments should refer to Project Number 39473.

The amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2009) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, HB 1753 §1, which amends PURA §14.101(a), effective September 1, 2011, to increase the threshold above which public utilities must report to the commission.

Cross Reference to Statutes: Public Utility Regulatory Act §14.001 and HB 1753 §1 (which amends PURA §14.101(a)).

§25.74. *Report on Change in Control, Sale of Property, Purchase of Stock, or Loan.*

(a) (No change.)

(b) Pursuant to PURA §14.101(a)(1), an electric utility shall not sell, acquire, or lease a plant as an operating unit or system in the State of Texas for a total consideration of more than \$10 million [\$100,000] unless the electric utility reports such transaction to the commission at least one commission working day before the transaction closes. Pursuant to PURA §37.154, if the transaction involves the sale, assignment, or lease of a certificate of convenience and necessity (CCN) or a right obtained under a CCN, the electric utility must obtain commission approval of such CCN transfer.

(c) - (f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 8, 2011.

TRD-201102611

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: August 21, 2011

For further information, please call: (512) 936-7223

SUBCHAPTER J. COSTS, RATES AND TARIFFS

DIVISION 1. RETAIL RATES

16 TAC §25.243

The Public Utility Commission of Texas (commission) proposes new §25.243, relating to Distribution Cost Recovery Factor (DCRF). The rule provides for the adjustment of an electric utility's rates for changes in certain distribution costs, pursuant to Senate Bill 1693 of the 82nd Legislature, Regular Session in 2011 (SB 1693). Project Number 39465 is assigned to this proceeding.

Darryl Tietjen, Director of the commission's Rate Regulation Division, has determined that for each year of the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Tietjen has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be compliance with SB 1693. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the rule. Therefore, no regulatory flexibility analysis is required.

Mr. Tietjen has also determined that for each year of the first five years the rule is in effect, there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the APA, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on August 15, 2011. The request for a public hearing must be received by August 8, 2011.

Comments on the rule may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. Sixteen copies of comments on the rule are required to be filed pursuant to §22.71(c) of this title. Initial comments on the rule are due August 8, 2011 and reply comments are due August 12, 2011. Comments should be organized in a manner consistent with the organization of the rule. All comments should refer to Project Number 39465.

The new rule is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2010) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, SB 1693 §1 (to be codified as PURA §36.210), which requires the commission to adopt rules to implement the section; and PURA §36.052,

which requires the commission to consider applicable factors in establishing a reasonable return on invested capital.

Cross Reference to Statutes: PURA §14.002 and §36.052 and SB 1693 §1 (to be codified as PURA §36.210).

§25.243. Distribution Cost Recovery Factor (DCRF).

(a) Purpose and application. This section implements Public Utility Regulatory Act (PURA) §36.210. This section applies to electric utilities, including transmission and distribution utilities (TDUs), that provide wholesale or retail distribution service.

(b) Definitions. The following terms, when used in this section, have the following meanings unless the context indicates otherwise.

(1) Capitalized operations and maintenance expenses--Incurred expenses that have been deferred as a regulatory asset or liability.

(2) Distribution invested capital--The parts of the electric utility's invested capital, as described in PURA §36.053, that are categorized as distribution plant, distribution-related intangible plant, and distribution-related communication equipment and networks properly recorded in Federal Energy Regulatory Commission Uniform (FERC) System of Accounts 303, 352, 353, 360 - 374, 391, and 397. Distribution invested capital includes only costs that comply with PURA §36.053 and are prudent, reasonable, and necessary. Distribution invested capital does not include: generation-related costs; transmission-related costs, including costs recovered through rates set pursuant to §25.192 of this title (relating to Transmission Service Rates), §25.193 of this title (relating to Distribution Service Provider Transmission Cost Recovery Factors (TCRF)), or §25.239 of this title (relating to Transmission Cost Recovery Factor for Certain Electric Utilities); indirect corporate costs; capitalized operations and maintenance expenses; and distribution invested capital recovered through a separate rate, including a surcharge, tracker, rider, or other mechanism.

(3) Indirect Corporate Costs--Corporate support costs, except for those costs recorded as construction overhead in accordance with FERC guidelines.

(4) Weather-normalized--Adjusted for normal weather using weather data for the most recent ten years.

(c) Application for DCRF or DCRF update.

(1) General requirements. An electric utility may apply for inclusion of a DCRF in its tariff for distribution service. An electric utility may have no more than one DCRF or DCRF update become effective each calendar year. An electric utility may change its rates pursuant to a DCRF no more than four times between comprehensive base-rate proceedings. To implement a DCRF or DCRF update, an electric utility shall file an application for the DCRF or DCRF update simultaneously with all regulatory authorities having original jurisdiction over the electric utility's distribution service area. A municipality's governing body with original jurisdiction over an application for the DCRF or DCRF update shall make a final decision on the application within 60 days after the application was filed. If the governing body does not make a final decision within 60 days after the application was filed, the application is deemed denied by the governing body. The electric utility shall appeal the governing body's final decision to the commission no later than 30 days after the decision, regardless of whether the governing body approves or denies the application. The electric utility's appeal automatically suspends the governing body's final decision. An electric utility shall not apply for a DCRF or DCRF update while a comprehensive base-rate proceeding for the electric utility is pending. In addition, the presiding officer shall dismiss an electric utility's application for a DCRF or DCRF update if the electric utility

or commission initiates a comprehensive base-rate proceeding during the pendency of the DCRF or DCRF update proceeding.

(2) Requirements applicable to TDUs. A TDU may file an application for a DCRF or DCRF update only during the period April 1 through April 8. A TDU shall not file an application for a DCRF or DCRF after April 8 of a year even if April 8 is not a working day, as defined by §22.2(44) of this title (relating to Definitions).

(3) Requirements applicable to other electric utilities. An electric utility that does not offer customer choice may file an application for a DCRF or DCRF update proceeding at any time other than in April and May.

(d) Calculation of DCRF.

(1) DCRF formula. The DCRF for each rate class shall be calculated using the following formula:

Figure: 16 TAC §25.243(d)(1)

(2) Return on invested capital. The electric utility's rate of return is the rate of return approved by the commission in the electric utility's last comprehensive base-rate proceeding if the final order (which may be an order on rehearing) approving the rate of return was filed less than three years before the application for a DCRF or DCRF update was filed. If the final order approving the rate of return was filed three years or more before the application for a DCRF or DCRF update was filed, the rate of return is the lesser of the rate of return in the final order or the alternative rate of return calculated as follows: The alternative rate of return shall be calculated using a 10% cost of equity, the capital structure approved by the commission in the electric utility's most recent base-rate proceeding, and the cost of debt as reported in the electric utility's most recent Earnings Monitoring Report filed pursuant to §25.73 of this title (relating to Financial and Operating Reports).

(e) Procedures for DCRF or DCRF update proceeding.

(1) Filing requirements. To file an application for a DCRF or DCRF update, an electric utility shall use the commission-prescribed form and include a sworn statement from an appropriate employee of the electric utility that the application complies with the electric utility's tariff and this section and is true and correct to the best of the employee's knowledge, information, and belief.

(2) Notice and intervention deadline. By the day after it files its application, the electric utility shall provide notice of its application to all parties in the electric utility's last comprehensive base-rate proceeding and, if applicable, last DCRF or DCRF update proceeding, and shall include in the notice the docket number for the new proceeding. The intervention deadline is 30 days from the date service of notice is completed.

(3) Parties. The Office of Public Utility Counsel and affected parties may participate as parties in a DCRF or DCRF update proceeding.

(4) Denial due to earnings. The commission shall deny an electric utility's application for a DCRF or DCRF update if, at the time the DCRF or DCRF update application is filed, the most recent earnings monitoring report filed by the electric utility pursuant to §25.73(b) of this title shows that the electric utility is earning more than its authorized rate of return using weather-normalized data. In making this determination, the commission shall correct the rate of return calculation in the earnings monitoring report to the extent that the calculation does not comply with §25.73(b) of this title and any form adopted to implement that subsection.

(5) Scope of proceeding. The issues of whether distribution invested capital included in an application for a DCRF or DCRF

adjustment complies with PURA §36.053 and is prudent, reasonable, and necessary shall not be addressed in a proceeding for a DCRF or DCRF update unless the presiding officer finds that good cause exists to address these issues.

(6) Commission processing of application.

(A) Sufficiency of application. A motion to find an application materially deficient shall be filed no later than 30 days after service of notice is completed. The motion shall be served on the electric utility by hand delivery, facsimile transmission, or overnight courier delivery, or by e-mail if agreed to by the electric utility or ordered by the presiding officer. The motion shall specify the nature of the deficiency and the relevant portions of the application, and cite the particular requirement with which the application is alleged not to comply. The electric utility's response to a motion to find an application materially deficient shall be filed no later than five working days after such motion is received. If within ten working days after the deadline for filing a motion to find an application materially deficient, the presiding officer has not issued a written order concluding that material deficiencies exist in the application, the application is deemed sufficient.

(B) Discovery. Each party, other than commission staff, may serve no more than 20 requests for information and requests for admissions of fact pursuant to §22.144 of this title (relating to Requests for Information and Requests for Admission of Facts), except where the presiding officer finds good cause for a party to serve additional requests. A request shall not include subparts or multiple questions, and requests shall be sequentially numbered, regardless of whether the requests are served at the same time or on different parties. A response to a request shall be served no later than ten working days after receipt of the discovery request. An objection to a request shall be filed no later than five working days from receipt of the request. A request for which an objection is filed does not count towards a party's request limit. A party may request a technical conference by the intervention deadline, and shall identify the topics that it wants to discuss. An electric utility shall hold the technical conference in Austin, Texas five working days after the intervention deadline, unless the electric utility and the parties who requested the technical conference agree to a different date. The technical conference shall be held at the location designated by the electric utility, unless the commission staff designates a location. The electric utility shall have appropriate persons attend the technical conference to answer questions. A party may take a deposition only if authorized by the presiding officer.

(C) Consolidation of appeals. The presiding officer shall consolidate the electric utility's appeal pursuant to subsection (c)(1) of this section of the final decision of a municipality's governing body on the application for a DCRF or DCRF update with the application over which the commission has original jurisdiction.

(D) System-wide rates and effective date of DCRF or DCRF update. The presiding officer shall approve the DCRF or DCRF on a system-wide basis and set the effective date of the DCRF or DCRF update for a TDU as September 1 unless good cause exists for a later date. The presiding officer shall make a final decision on a DCRF or DCRF update application made by a TDU at least 46 days before the effective date of the approved rates, even if this requirement results in an effective date after September 1. For an electric utility that does not offer customer choice, the presiding officer shall set the effective date of the DCRF or DCRF update to be 145 days after the application was filed unless good cause exists for a later date.

(E) Review of application. A DCRF or DCRF update proceeding is eligible for disposition pursuant to §22.35(b)(1) of this title (relating to Informal Disposition).

(F) Notice of approved rates. Unless otherwise ordered, a TDU shall serve notice of the approved rates and the effective date of the approved rates the day after the presiding officer's final decision, to retail electric providers that are authorized by the registration agent to provide service in the TDU's distribution service area.

(f) DCRF reconciliation. The commission shall reconcile investments recovered through a DCRF in the electric utility's next comprehensive base-rate proceeding to the extent such reconciliation did not already occur in a DCRF or DCRF update proceeding pursuant to subsection (e)(5) of this section. The reconciliation shall be limited to the issues of the extent to which the investments complied with PURA §36.053 and this section and were prudent, reasonable, and necessary. To the extent that the commission determines that the investments did not comply with PURA §36.053 and this section or were not prudent, reasonable, and necessary, the electric utility shall refund all revenues related to the investments that it improperly recovered through rates, and shall also pay its customers carrying charges on these revenues. The carrying charges shall be determined as follows. For the time period beginning with the date on which over-recovery is determined to have begun to the effective date of the new base rates, carrying costs shall be calculated using the same rate of return that was applied to the investments in the DCRF proceedings that resulted in the over-recovery. For the time period beginning with the effective date of the new base rates, carrying costs shall be calculated using the electric utility's rate of return authorized in the comprehensive base-rate proceeding.

(g) DCRF's effect on electric utility's financial risk and rate of return. In setting the rate of return for an electric utility with a DCRF, the commission may expressly consider the effect of the DCRF on the electric utility's financial risk and rate of return.

(h) Reports. An electric utility with a DCRF shall file reports that will permit the commission to monitor its DCRF revenues, in accordance with any filing requirements and schedules prescribed by the commission pursuant to §25.73 of this title or this section.

(i) Expiration. This section expires upon the expiration of PURA §36.210. Any DCRF in effect at that time shall remain in effect until the electric utility's next comprehensive base-rate proceeding.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 8, 2011.

TRD-201102612

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: August 21, 2011

For further information, please call: (512) 936-7223



PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 78. TALENT AGENCIES

16 TAC §§78.1, 78.10, 78.20, 78.21, 78.30, 78.40, 78.70, 78.72, 78.73, 78.75, 78.80, 78.90

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Licensing and Regulation or in the Texas

Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Department of Licensing and Regulation (Department) proposes the repeal of 16 Texas Administrative Code (TAC) Chapter 78, §§78.1, 78.10, 78.20, 78.21, 78.30, 78.40, 78.70, 78.72, 78.73, 78.75, 78.80, and 78.90, regarding the Talent Agencies program.

House Bill (HB) 3167, 82nd Legislature, Regular Session (2011), repealed Texas Occupations Code, Chapter 2105, which removed registration requirements for, and the Department's authority to regulate, talent agencies effective September 1, 2011. The rationale included the fact that there were a low number of certificate holders and complaint cases with the Department. The Department opined that the regulatory burden outweighed the benefit of having this occupation regulated.

The repeal of Texas Occupations Code, Chapter 2105 requires repeal of the rules that implemented these sections of the statute relating to the Talent Agencies program. Therefore, the Department proposes to repeal all of the rules under 16 TAC Chapter 78.

William H. Kuntz, Jr., Executive Director, has determined that for each year of the first five-year period the proposed repeal is in effect, there will be no direct cost to state or local government as a result of enforcing or administering the proposed repeal. The loss of revenue to the state would not be significant, being approximately \$30,000 per year in annual \$400 initial or renewal fees for 76 certificate holders.

Mr. Kuntz also has determined that for each year of the first five-year period the proposed repeal is in effect, the public may benefit because of the cessation of costs associated with regulating the industry.

After evaluating the proposed repeal, the Department believes that there will be no adverse economic effect on small and micro-businesses.

Since the agency has determined that the repeal will have no adverse economic effect on small businesses preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as defined under Texas Government Code §2006.002, is not required.

Comments on the proposal may be submitted by mail to Caroline Jackson, Legal Assistant Team Lead, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or by facsimile to (512) 475-3032, or electronically to erule.comments@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The repeal is proposed under HB 3167, 82nd Legislature, Regular Session (2011), which repealed Texas Occupations Code, Chapter 2105 which authorized the Department to regulate Talent Agencies; and Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 2105. No

other statutes, articles, or codes are affected by the proposed repeal.

§78.1. *Authority.*

§78.10. *Definitions.*

§78.20. *Registration Requirements--General.*

§78.21. *Registration and Renewal Requirements--Certificates of Registration.*

§78.30. *Exemptions.*

§78.40. *Financial Security Requirements.*

§78.70. *Responsibilities of the Registrant--General.*

§78.72. *Responsibilities of Registrant--Treatment of Monies.*

§78.73. *Responsibilities of the Registrant--Financial Recordkeeping.*

§78.75. *Responsibilities of the Registrant--Prohibited Acts.*

§78.80. *Fees.*

§78.90. *Sanctions--Administrative Sanctions/Penalties.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 11, 2011.

TRD-201102624

William H. Kuntz, Jr.

Executive Director

Texas Department Licensing and Regulation

Earliest possible date of adoption: August 21, 2011

For further information, please call: (512) 463-7348



TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 175. FEES AND PENALTIES

22 TAC §175.1, §175.2

The Texas Medical Board (Board) proposes amendments to §175.1, concerning Application Fees, and §175.2, concerning Registration and Renewal Fees.

Elsewhere in this issue of the *Texas Register*, the Board contemporaneously withdraws the proposed amendment to §175.1, which was previously published in the May 20, 2011, issue of the *Texas Register* (36 TexReg 3169).

The amendment to §175.1 raises the fees for initial registration to be a non-certified radiologic technician (NCT) to \$115.50 to be consistent for the fees for renewals of NCT certificates. The amendment to §175.1 also increases the application fees \$10 each for initial physician in training permits, physician in training permits for program transfer, and physician in training permits for applicants performing rotations in Texas.

The amendment to §175.2 increases the fees for initial and subsequent biennial permits for physician registration by \$20 each.

Nancy Leshikar, General Counsel for the Board, has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the proposal will be to create an incentive for NCTs to renew their certificates rather than to allow the license to lapse and then reapply for initial certification at a lower rate that requires more

agency time to process. Section 175.1 will also procedure a disincentive to allow a license to lapse and pay a lower initial fee versus a higher renewal fee. The public benefit also anticipated as a result of enforcing the sections as proposed will be to increase fees to certain applications to cover the increased operation costs to the agency.

Mrs. Leshikar has also determined that for the first five-year period the sections are in effect the fiscal implication to state or local government as a result of enforcing the sections as proposed is undetermined as it will depend on the number of applicants and how much staff time is necessary to process the applications. The intent of the fee though is to offset costs to the agency. The effect to individuals required to comply with these rules as proposed will be \$63.50 per applicant who applies for initial NCT certification and \$10 for initial physician in training applications and \$10 per year for licensed physicians with full licensure. There will be no effect on small or micro businesses.

Comments on the proposals may be submitted to Jennifer Kaufman, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendments are also authorized by §153.051, Texas Occupations Code, and Chapter 601 of the Texas Occupations Code. No other statutes, articles or codes are affected by this proposal.

§175.1. Application Fees.

The board shall charge the following fees for processing an application for a license or permit:

- (1) Physician Licenses:
 - (A) Full physician license (includes surcharge of \$215)--\$1002.
 - (B) Telemedicine license (includes surcharge of \$215)--\$1002.
 - (C) Administrative medicine license (includes surcharge of \$215)--\$1002.
 - (D) Reissuance of license following revocation (includes surcharge of \$205)--\$885.
 - (E) Temporary license:
 - (i) State health agency--\$50.
 - (ii) Visiting physician--\$0.
 - (iii) Visiting professor--\$167.
 - (iv) National Health Service Corps--\$0.
 - (v) Faculty temporary license (includes surcharges of \$280)--\$737.
 - (vi) Postgraduate Research Temporary License--\$0.
 - (vii) provisional license--\$107.
 - (F) Licenses and Permits relating to Medical Education:

(i) Initial physician in training permit (includes surcharge of \$5)--~~\$212~~ [~~\$202~~].

(ii) Physician in training permit for program transfer (includes surcharge of \$4)--~~\$141~~ [~~\$131~~].

(iii) Evaluation or re-evaluation of postgraduate training program--\$250.

(iv) Physician in training permit for applicants performing rotations in Texas (includes surcharge of \$3)--~~\$130~~ [~~\$120~~].

(2) Physician Assistants:

(A) Physician assistant license (includes surcharge of \$5)--\$205.

(B) Reissuance of license following revocation (includes surcharge of \$5)--\$205.

(C) Temporary license--\$107.

(3) Acupuncturists/Acudetox Specialists/Continuing Education Providers:

(A) Acupuncture licensure (includes surcharge of \$5)--\$305.

(B) Temporary license for an acupuncturist--\$107.

(C) Acupuncturist distinguished professor temporary license--\$50.

(D) Acudetox specialist certification (includes surcharge of \$2)--\$52.

(E) Continuing acupuncture education provider--\$50.

(F) Review of a continuing acupuncture education course--\$25.

(G) Review of continuing acudetox acupuncture education courses--\$50.

(4) Non-Certified Radiologic Technician permit (includes surcharge of ~~\$3~~ [~~\$2~~])--~~\$115.50~~ [~~\$52~~].

(5) Non-Profit Health Organization initial certification--\$2,500.

(6) Surgical Assistants:

(A) Surgical assistant licensure--\$300.

(B) Temporary license--\$50.

(7) Criminal History Evaluation Letter--\$100.

(8) Certifying board evaluation--\$200.

§175.2. Registration and Renewal Fees.

The board shall charge the following fees to continue licenses and permits in effect:

(1) Physician Registration Permits:

(A) Initial biennial permit (includes surcharges of \$496)--~~\$833~~ [~~\$813~~].

(B) Subsequent biennial permit (includes surcharges of \$492)--~~\$829~~ [~~\$809~~].

(C) Additional biennial registration fee for office-based anesthesia--\$210 (includes surcharge of \$10).

(2) Physician Assistant Registration Permits:

(A) Initial annual permit (includes surcharges of \$10)--\$257.50.

(B) Subsequent annual permit (includes surcharges of \$6)--\$253.50.

(3) Acupuncturists/Acudetox Specialists Registration Permits:

(A) Initial annual permit for acupuncturist (includes surcharges of \$10)--\$322.50.

(B) Subsequent annual permit for acupuncturist (includes surcharges of \$6)--\$318.50.

(C) Annual renewal for acudetox specialist certification--\$87.50.

(4) Non-Certified Radiologic Technician permit annual renewal (includes surcharge of \$3)--\$115.50.

(5) Non-Profit Health Organization biennial recertification--\$1,125.

(6) Surgical Assistants registration permits:

(A) Initial biennial permit (includes surcharges of \$6)--\$531.

(B) Subsequent biennial permit (includes surcharges of \$2)--\$527.

(7) Certifying Board evaluation renewal--\$200.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 11, 2011.

TRD-201102623

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Earliest possible date of adoption: August 21, 2011

For further information, please call: (512) 305-7016



PART 18. TEXAS STATE BOARD OF PODIATRIC MEDICAL EXAMINERS

CHAPTER 371. EXAMINATION AND LICENSURE

22 TAC §371.3

The Texas State Board of Podiatric Medical Examiners proposes amendments to §371.3, concerning Fees. The amendments to §371.3 are being proposed to allow for cost recovery for processing special requests exceeding standard application/service costs and to cover the contingent revenue as stipulated by the 82nd Texas Legislature which requires the board to assess or increase fees sufficient to generate during the FY 2012-2013 biennium \$21,634 in excess of \$960,000 (Object Code 3562), contained in the Comptroller of Public Accounts biennial revenue estimate for FY 2012-2013. Texas Occupations Code §202.153, Fees, states that the board by rule shall establish fees in amounts reasonable and necessary to cover the cost of administering this chapter.

Hemant Makan, Executive Director, has determined that for each year of the first five years the rule is in effect, there will be no fiscal

implications for state or local government as a result of adopting the section.

Mr. Makan has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of adopting the amendments for §371.3 will be to continue licensure and enforcement functions with funding for an additional board meeting and staff retention. There will be no effect on small or micro-businesses. There is a nominal \$15 economic increase to the podiatric physicians who are required to comply with the section.

Comments on or about the amendments may be submitted to Janie Alonzo, Staff Services Officer V, Texas State Board of Podiatric Medical Examiners, P.O. Box 12216, Austin, TX 78711-2216 or janie.alonzo@tsbpme.texas.gov.

The amendments are being proposed under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the laws of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry.

The proposed amendment for §371.3 implements Texas Occupations Code §202.153, Fees.

§371.3. Fees.

(a) The fees set by the Board and collected by the Board must be sufficient to meet the expenses of administering the Podiatric Medical Practice Act, subsequent amendments, and the applicable rules and regulations.

(b) Fees are as follows:

(1) Examination--\$250 plus \$39 fee for HB660 (criminal history record information)

(2) Re-Examination--\$250 plus \$39 fee for HB660 (criminal history record information)

(3) Temporary License--\$125

(4) Extended Temporary License--\$50

(5) Temporary Faculty License--\$40

(6) Provisional License--\$125

(7) Initial Licensing Fee--~~\$474~~ [\$459] (i.e. ~~\$469~~ [\$454] plus \$5 Office of Patient Protection fee for HB2985 - 78th Session)

(8) Annual Renewal--~~\$470~~ [\$455] (i.e. ~~\$469~~ [\$454] plus \$1 Office of Patient Protection fee for HB2985 - 78th Session)

(9) Renewal Penalty--as specified in Texas Occupations Code, §202.301(d)

(10) Non certified podiatric technician registration--\$35

(11) Non certified podiatric technician renewal--\$35

(12) Hyperbaric Oxygen Certificate--\$25

(13) Nitrous Oxide Registration--\$25

(14) Duplicate License--\$50

(15) Copies of Public Records--The charges to any person requesting copies of any public record of the Board will be the charge established by the appropriate state authority. The Board may reduce or waive these charges at the discretion of the Executive Director if there is a public benefit.

(16) Statute and Rule Notebook--provided at cost to the agency

(17) Duplicate Certificate--\$10

(18) HB660 (criminal history record information)--\$39

(19) Recovery Fee--An additional \$100 charge may be applied for processing special requests exceeding standard application/service costs (e.g. examination rescheduling, excessive/amended document reviews, obtaining legal/court documentation, criminal history evaluation letters, etc.).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 7, 2011.

TRD-201102583

Janie Alonzo

Staff Services Officer V

Texas State Board of Podiatric Medical Examiners

Earliest possible date of adoption: August 21, 2011

For further information, please call: (512) 305-7000



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 51. EXECUTIVE

SUBCHAPTER D. EDUCATION

31 TAC §51.80

The Texas Parks and Wildlife Department proposes an amendment to §51.80, concerning Hunter Education Course and Instructors. The proposed amendment would exempt honorably discharged veterans of the United States armed forces and active-duty members of the United States military forces, the Texas Army National Guard, the Texas Air National Guard, and the Texas State Guard from the live-fire requirements of hunter education instruction.

House Bill 555 (HB 1080), enacted by the 82nd Texas Legislature, Regular Session, 2011, amended Parks and Wildlife Code, §62.014, to exempt honorably discharged veterans of the United States armed forces and active-duty members of the United States military forces, the Texas Army National Guard, the Texas Air National Guard, and the Texas State Guard from live-fire requirements of hunter education instruction. The proposed amendment incorporates the statutory exemption created by HB 1080 in the department's rules prescribing the curriculum for hunter education instruction.

Mr. Terry Erwin, Hunter Education Coordinator, has determined that for each of the first five years that the rule as proposed is in effect, there will be no fiscal implications to state and local governments as a result of enforcing or administering the rule.

Mr. Erwin also has determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be

hunter education rules that accurately describe the curriculum for the hunter education program.

There will be no adverse economic effect on persons required to comply with the rule as proposed.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect affect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. Since the proposed rule does not affect small businesses or micro-businesses, the department has determined that the proposed rule will not impose any direct adverse economic effects on small businesses or micro-businesses. Accordingly, the department has not prepared a regulatory flexibility analysis under Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedure Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

Comments on the proposed rule may be submitted to Terry Erwin, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8140; e-mail: terry.erwin@tpwd.state.tx.us.

The amendment is proposed under the authority of Parks and Wildlife Code, §62.014, which requires the commission to adopt rules to implement the hunter education program, and House Bill 1080, 82nd Texas Legislature, Regular Session (2011) which exempts honorably discharged veterans of the United States armed forces and active-duty members of the United States military forces, the Texas Army National Guard, the Texas Air National Guard, and the Texas State Guard from the live-fire requirements of hunter education instruction.

The proposed amendment affects Parks and Wildlife Code, Chapter 62.

§51.80. Hunter Education Course and Instructors.

(a) Hunter Education Course.

(1) The course shall consist of at least 10 hours of instruction, including any combination of home study, classroom, laboratory, field exercises and live-firing exercises on the following subjects:

(A) - (D) (No change.)

(E) A person is exempt from live-firing requirements of this subsection if the person is:

(i) an honorably discharged veteran of the United States armed forces; or

(ii) on active duty as a member of the United States military forces, the Texas Army National Guard, the Texas Air National Guard, or the Texas State Guard.

(2) - (5) (No change.)

(b) - (c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 8, 2011.

TRD-201102594

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: August 21, 2011

For further information, please call: (512) 389-4775



CHAPTER 53. FINANCE

SUBCHAPTER A. FEES

DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

31 TAC §53.12

The Texas Parks and Wildlife Department proposes an amendment to §53.12, concerning Commercial Fishing Licenses and Tags. The proposed amendment would create a fee of \$0.20 for a harvester/shell recovery tag.

The proposed amendment would implement provisions of Senate Bill 932 (SB 932), enacted by the 82nd Texas Legislature, Regular Session (2011). SB 932 amended Parks and Wildlife Code, Chapter 76, by adding §76.021 to require the Texas Parks and Wildlife Commission (Commission) to collect a fee of 20 cents (\$0.20) or an amount set by the commission, whichever is greater, from a licensed commercial oyster fisherman for each box of oysters harvested by the fisherman from the water in this state. The statute also requires the issuance of tags or other means to collect the fee. In another rulemaking published elsewhere in this issue of the *Texas Register*, the department proposes to require oyster fishermen to affix an oyster shell recovery tag to each sack of harvested oysters. The proposed amendment to §53.12 establishes the fee for the tag at the statutory minimum of \$0.20.

Lance Robinson, Coastal Fisheries Division Regional Director, has determined that for each of the first five years that the proposed rule is in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the proposed rule.

Mr. Robinson also has determined that for each of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing or administering the rules as proposed will be increased oyster recruitment, a more stable average price of oysters throughout the season, and the recovery and enhancement of public oyster reefs.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As

required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, commission considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that there will be adverse economic effects on small businesses, micro-businesses, and persons required to comply with the amendments as proposed; however, those effects will be minimal. The department has determined that most if not all businesses affected by the proposed rule qualify as small or micro-businesses. In addition, since the fee is no higher than the fee established by SB 932, the fee would result in no small business impact beyond the impact of SB 932. However, to provide a understanding of the possible impacts, the following is provided.

Under regulations of the Department of State Health Services (DSHS, 25 TAC §241.57(e)), each bag or container of molluscan shellfish (including oysters) transported by a harvester (oyster fisherman) or dealer is required to be tagged with a harvester's tag or a dealer's tag bearing information required under the federal National Shellfish Sanitation Program. Under Parks and Wildlife Code, §76.021(c)(2), as added by SB 932, the oyster shell recovery tag will satisfy the regulatory requirements of DSHS and function in lieu of the harvester's or dealer's tag. Thus, there will be no adverse economic impact on oyster fishermen other than the tag fee of \$0.20. The department consulted with representatives of the oyster industry to determine the current cost of compliance with DSHS tagging requirements, who reported that the current cost of compliance was in the range of \$0.06 to \$0.08 per tag. Subtracting the current fee expense for the harvester's tag from the proposed fee for the oyster shell recovery tag yields a net increase in cost of compliance of between \$0.12 and \$0.14 per tag. Using the average number of sacks harvested over the last three years (757,198), the net increase in cost to license holders would range from \$90,864.00 to \$106,008.00, which, when divided by the number of license holders (638), yields an average increase in cost per license holder of between \$139 and \$169.

The purpose of the oyster shell recovery program is to generate funds to return shell to public oyster reefs, where the oyster shell will function as cultch, or spawning beds, for additional oyster production, which should result in increased availability of oysters for commercial harvest. Studies from Louisiana and Florida show that every dollar spent on restoration results in a \$20 economic benefit (Dugas 1988; Berrigan 1990); thus, the economic impact to small and micro-businesses should be positive over time. Also, as noted above, SB 932 requires a minimum fee of \$0.20 per tag; thus, the proposed tag fee is required by statute and cannot be less than \$0.20 per tag.

The department has determined that the proposed rule will have very little impact upon local employment at the macro or micro level. As noted in the discussion of economic impacts to small and micro-businesses, the average per-license increase in cost as a result of the proposed fee for oyster shell recovery tags ranges from \$139 to \$168 per license-holder per year,

which the department believes would not cause measurable changes in local employment. The department also notes that proposed amendments to oyster harvest regulations published elsewhere in this issue of the *Texas Register* should result in the increased harvest of more marketable oysters over time, which should more than compensate for increased costs of compliance associated with the proposed tag fee.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

The department has determined that the proposed rule is in compliance with Government Code, §505.11 (Actions and Rules Subject to the Coastal Management Program) and §505.22 (Consistency Required for New Rules and Rule Amendments Subject to the Coastal Management Program).

Comments on the proposed rule may be submitted to Jeremy Leitz, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4333; email: jeremy.leitz@tpwd.state.tx.us.

The amendment is proposed under the provisions of Senate Bill 972, as enacted by the 82nd Texas Legislature, Regular Session (2011), which amended Parks and Wildlife Code, Chapter 76, by adding new §76.021 to provide for the collection of a fee for each box of oysters harvested by licensed commercial oyster fishermen from the waters of the state.

The proposed amendment affects Parks and Wildlife Code, Chapter 76.

§53.12. *Commercial Fishing Licenses and Tags.*

- (a) (No change.)
- (b) Oystering licenses.
 - (1) - (3) (No change.)
 - (4) Tags. Harvester/shell recovery tag--\$0.20.
- (c) - (e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 8, 2011.

TRD-201102595

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: August 21, 2011

For further information, please call: (512) 389-4775



31 TAC §53.17

The Texas Parks and Wildlife Department proposes an amendment to §53.17, concerning Miscellaneous Fees. The proposed amendment would increase the Off-Highway Vehicle (OHV) decal fee from \$8 to \$16.

Parks and Wildlife Code, §29.003, requires that an OHV decal be obtained and placed on an OHV being operated on "public

land over which the department has authority, on land purchased or leased by the department, on other public land, or on land purchased or developed under a grant made under §29.008 or any other grant program operated or administered by the department on which off-highway vehicle recreation is legal." Parks and Wildlife Code, §29.003 establishes a fee for the OHV decal of \$8 or an amount set by the Parks and Wildlife Commission.

Under the provisions of House Bill 1 (General Appropriations Act), Article VI, Parks and Wildlife Department, Rider 36, enacted by the 82nd Texas Legislature, Regular Session (2011), the Texas Parks and Wildlife Department is appropriated all receipts collected from increasing the OHV decal fee from \$8 to \$16, pursuant to Parks and Wildlife Code, Chapter 29, for the purpose of implementing and administering the program. The department has determined that it is necessary to increase the fee for the OHV decal in order to continue operation of the OHV program. If the fee is not increased, the department would be forced to suspend the OHV program for the 2012-2013 biennium, as there are no funds appropriated for it other than as a consequence of the proposed fee increase. The revenue from the OHV decal fee is used to establish and maintain a public system of trails and other recreational area for use by owners and riders of off-highway vehicles.

Mr. Andy Goldbloom, Recreational Trails Program Manager, has determined that for each of the first five years that the rule as proposed is in effect, there will be fiscal implications to state government as a result of enforcing or administering the rule. The department estimates that the increased fee for the OHV decal will generate additional revenue of a minimum of \$175,362 per fiscal year, which is based on the anticipated sale of an additional 21,920 OHV decals per year at \$16 per decal. Between 2005 and 2010, sales of OHV decals have risen from fewer than 2,000 to more than 21,000, and the department estimates, based on those trends, that OHV decal sales will continue to increase at a minimum of 1.5% per year.

There will be no fiscal implications to other units of state or local government as a result of enforcing or administering the rule as proposed.

Mr. Goldbloom also has determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be enhanced funding for the creation and maintenance of trail systems enjoyed by the public.

There will be an adverse economic effect on persons required to comply with the rule as proposed, namely, an increase of \$8 per person in the cost of obtaining an OHV decal.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the pur-

chase or modification of equipment or services. The department has determined that the proposed rules will not impose negative economic impacts on small businesses or micro-businesses. Accordingly, the department has not prepared a regulatory flexibility analysis under Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedure Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

Comments on the proposed rule may be submitted to Andy Goldbloom, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8128; e-mail: andy.goldbloom@tpwd.state.tx.us.

The amendment is proposed under the authority of Parks and Wildlife Code, §29.003(b), which authorizes the commission to establish a fee for an off-highway vehicle decal.

The proposed amendment affects Parks and Wildlife Code, Chapter 29.

§53.17. *Miscellaneous Fees.*

- (a) Off-highway vehicle decal--~~\$16~~ [\$8];
- (b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 8, 2011.

TRD-201102596

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: August 21, 2011

For further information, please call: (512) 389-4775



DIVISION 3. TRAINING AND CERTIFICATION FEES

31 TAC §53.50

The Texas Parks and Wildlife Department proposes an amendment to §53.50, concerning Training and Certification Fees. The proposed amendment would establish the \$10 statutory fee for boater education training in rule and allow an agent of the department who provides boater education instruction to retain a service fee of \$15 per person for providing boater education instruction.

Parks and Wildlife Code, §31.108(f) currently allows an agent acting under authority of Parks and Wildlife Code, §31.108(d) to collect and keep a \$3 service fee. House Bill 3722 (HB 3722), enacted by the 82nd Texas Legislature, Regular Session, 2011, amended Parks and Wildlife Code, §31.108(f) to allow the Parks and Wildlife Commission to set the amount that may be kept by an agent acting under authority of Parks and Wildlife Code, §31.108(d).

The Texas Water Safety Act (Parks and Wildlife Code, Chapter 31) requires persons born after September 1, 1993 to complete an approved boater education course before legally being able to operate a vessel of more than 15 horsepower, a windblown vessel of more than 14 feet in length, or a personal watercraft alone in public water. Approved boater education courses are offered through agents appointed by the department. Most people who take the Texas boater education course do so via an online course provided by agents appointed by the department. The department has determined that the current \$3 limit on the service fee that agents are allowed to collect and keep is not sufficient for agents to continue to provide the online course. In order to provide a reasonable incentive for agents to continue to provide this valuable and convenient service, the department proposes to increase the service fee to an amount determined by the department's executive director, but not higher than \$15. The service fee amount was determined by conducting a survey of other states with similar boating education requirements. The survey indicated that boater education certification fees in Texas are the lowest in the nation, and that the median fee is \$24.50. The department therefore proposes a service fee not to exceed \$15, which is consistent with most other states and is believed to provide sufficient incentive for persons to continue to act as agents of the department for purposes of providing boater education.

Ms. Nancy Herron, Education Director, has determined that for each of the first five years that the rule as proposed is in effect, there will be no fiscal implications to state and local governments as a result of enforcing or administering the rule, as the service fee is retained by the individual providing boater education instruction and not the department.

Ms. Herron also has determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be the continued availability of convenient boater education certification.

There will be an adverse economic effect on persons required to comply with the rule as proposed, namely, an increase of up to \$12 per person in the cost of enrolling for the boater education course.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect affect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose record-keeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. The department has determined that any economic impacts on small businesses or micro-businesses will be positive; therefore, the proposed amendment will not impose any direct adverse economic effects on small businesses or micro-businesses. Accordingly, the department has not prepared a regulatory flexibility analysis under Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedure Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

Comments on the proposed rule may be submitted to Nancy Heron, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4362; e-mail: nancy.heron@tpwd.state.tx.us.

The amendment is proposed under the authority of House Bill 3722, 82nd Texas Legislature, Regular Session (2011), which amended Parks and Wildlife Code, §31.108 to authorize the commission to set a service fee that may be collected and kept by agents of the department who provide boater education instruction.

The proposed amendment affects Parks and Wildlife Code, Chapter 31.

§53.50. Training and Certification Fees.

(a) - (b) (No change.)

(c) Boater education fees.

(1) The fee for a boater education course is \$10 per person.

(2) An agent acting under the authority of Parks and Wildlife Code, §31.108(d) may collect and keep a service fee established by the department's executive director in an amount not to exceed \$15 from each person who enrolls in a boater education course.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 11, 2011.

TRD-201102619

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: August 21, 2011

For further information, please call: (512) 389-4775



SUBCHAPTER F. BONDED TITLE FOR VESSELS/OUTBOARD MOTORS

31 TAC §53.100

The Texas Parks and Wildlife Department proposes an amendment to §53.100, concerning Bonded Title--Acceptable Situations. The proposed amendment would create a process for obtaining title for abandoned vessels and outboard motors and make housekeeping-type changes to improve the clarity of the current rule.

Under Parks and Wildlife Code, §31.047, an application for title to a vessel or outboard motor "must be accompanied by other evidence reasonably required by the department to establish that the applicant or other person is entitled to a certificate of title or a noted security interest." In cases where the department has refused to issue a title because the applicant does not possess sufficient information to establish ownership, Parks and Wildlife

Code, §31.0465, allows the refused applicant to file a bond to obtain a title.

House Bill 787 (HB 787), enacted by the 82nd Texas Legislature, Regular Session, 2011, amended Parks and Wildlife Code, Chapter 31, to authorize the department to issue a certificate of title for a vessel or outboard motor that qualifies as having been abandoned. Under Parks and Wildlife Code, §31.003(17) as added by HB 787, a vessel or outboard motor is considered to be abandoned if it has remained on private property without the consent of the owner or person in charge of the property for more than seven consecutive days. Parks and Wildlife Code, §31.0466, as added by HB 787 provides that following the notification of local law enforcement by certified mail, a person seeking a certificate of title may post a surety bond equal to one and one-half times the value of the abandoned property, and 1) must prove to the department or allow the department to verify that the property is not stolen property, 2) the owner of the property is not being defrauded (as evidenced by an effort to contact the previous owner by verified mail), and 3) the property has not been and will not be seized by a law enforcement agency. The applicant must post notice of the title application to the public and, after the expiration of the third anniversary of the bond, the department will issue a clear certificate of title.

Parks and Wildlife Code, §31.0466, as added by HB 787, authorizes the department by rule to prescribe the form and manner in which a bond is executed and filed, to designate the manner and period of time of the public notice for application for title, and to define acceptable situations in which certificates of title may be issued after the filing of a bond.

Subsection (b) of the current rule makes reference to an applicant providing evidence of the "inability to locate the previous owner(s)" of an asset for which a title is being sought. The department has determined that this language is imprecise. The department's interest is in establishing that the required documentation cannot be obtained by the applicant. The current rule language also does not address property that may be affected by liens that could assist in determining ownership. Therefore, the proposed amendment would instead refer to "inability to obtain the required information from the previous owners or applicable lienholders." The proposed amendment to subsection (b) also would add "verified mail" as an acceptable method of proving that an attempt was made to contact the previous owner of an asset. Senate Bill (SB) 690, enacted by the 82nd Texas Legislature, Regular Session, 2011, amended the notice provisions of Property Code, Chapter 59, to include verified mail as an acceptable method of notifying owners of vessels or outboard motors subject to self-service storage facility liens. SB 690 amended Property Code, §59.043(c), to establish that "Notice by verified mail is considered delivered when the notice, properly addressed with postage prepaid, is deposited with the United States Postal Service or a common carrier." The amendment is necessary to maintain consistency with statutory terms used in Property Code that apply to vessels and outboard motors.

The proposed amendment to subsection (c) would create an exception to the current rule in order to accommodate the process for obtaining bonded title for abandoned vessels and outboard motors as defined by HB 787. The current rule states that the department will not issue a bonded title if the applicant does not have any proof of payment, ownership transfer or other related documentation to support a claim of ownership. Since the intent of the rulemaking is to create a process for obtaining bonded title

for vessels and outboard motors that have been abandoned, an exception to the current provision must be created.

Proposed new subsection (d) would set forth the requirements (in addition to the statutory requirements of Parks and Wildlife Code, Chapter 31, Subchapters B and B-1) for obtaining a bonded title for an abandoned vessel or outboard motor.

Proposed new subsection (d)(1) would require the applicant for a bonded title for a vessel or outboard motor that qualifies as being abandoned to notify the local law enforcement agency in whose jurisdiction the abandoned asset is located. The notification would be required to be made by certified mail on a form supplied by the department, and the local law enforcement agency would then have 30 days to notify the applicant of any intent on the part of the agency to remove the asset or take it into custody. The notification requirement is a statutory requirement. HB 787 created Parks and Wildlife Code, §31.0466(b)(2)(C), which requires an applicant to notify local law enforcement by certified mail at least 30 days prior to filing an application for bonded title with the department.

Proposed new subsection (d)(2) would require the department to publish all applications for bonded title to an abandoned vessel or outboard motor on the department's website for six consecutive months beginning within 10 days of receiving a qualified application for bonded title for an abandoned vessel or outboard motor. Under Parks and Wildlife Code, §31.0466(b)(3), as added by HB 787, an applicant is required to post notice of the certificate of title application in the manner and for a period of time designated by rule of the department. The department has determined that publication on the department website for a period of six consecutive months would be a constructive and cost-effective way to provide easily accessible and authoritative information to the public regarding applications for title for abandoned vessels and outboard motors. Proposed new subsection (d)(2)(A) and (B) would delineate the possible outcomes of the public notice process. Proposed new subparagraph (A) would provide that if there is a claim of interest (with proof of legal ownership) that is adverse to the applicant, the department would not issue a title until the issue is resolved, and that the involved parties could apply to a court of competent jurisdiction for resolution. It is clear that the department cannot proceed with the bonded title process if there are questions as to whether a vessel or outboard motor has indeed been abandoned by the legal or recorded owner, and that there are legally prescribed remedies for property disputes. Therefore, in cases where ownership is disputed, the department believes the logical and prudent path is to delay final processing until legal ownership of the asset is definitively established. Proposed new subparagraph (B) would provide that if no documented claim of interest is received by the department, the department's consideration of the bonded title application will proceed.

Proposed new subsection (d)(3) would stipulate that the department will use the department's Boating Registration Information and Titling System (BRITS) and the United States Coast Guard's Vessel Information System (VIS) database to assist in determining the last owner of record of a vessel or outboard motor for which a bonded title is sought under the provisions of the section. VIS is a nationwide database that compiles boating and titling registries from various states. The data in VIS is useful in determining if an abandoned vessel or outboard motor is the property of someone outside the state of Texas.

Ms. Frances Stiles, Manager of Boat Titling, Registration, and Marine Licensing, has determined that for each of the first five

years that the rule as proposed is in effect, there will be no fiscal implications to state and local governments as a result of enforcing or administering the rule.

Ms. Stiles also has determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be the ability of the public to gain title to vessels and outboard motors that have been abandoned, which should have the added benefit of reducing litter and the custodial and auctioneering costs to local governments associated with disposing of abandoned vessels and outboard motors.

There will be no adverse economic effect on persons required to comply with the rule as proposed.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. Since the proposed rule does not affect small businesses or micro-businesses, the department has determined that the proposed rule will not impose any direct adverse economic effects on small businesses or micro-businesses. Accordingly, the department has not prepared a regulatory flexibility analysis under Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedure Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

Comments on the proposed amendment may be submitted to Frances Stiles, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4860; e-mail: frances.stiles@tpwd.state.tx.us.

The amendment is proposed under the authority of House Bill 787, 82nd Texas Legislature, Regular Session, 2011 which added Parks and Wildlife Code, §31.003(17) and §31.0466 authorizing the department by rule to establish the form of a bond for a title to a vessel or outboard motor; prescribe the manner and longevity of public notice of an application for a bonded title; and define acceptable situations in which certificates of title may be issued after the filing of a bond.

The proposed amendments affect Parks and Wildlife Code, Chapter 31.

§53.100. *Bonded Title--Acceptable Situations.*

(a) (No change.)

(b) Bonded titles may be used in situations where the applicant is unable to produce complete documentation required by the department in order to title or transfer ownership of a vessel or outboard motor. Acceptable situations regarding the filing and award of a bonded title situation will apply where a complete history of ownership for a vessel or outboard motor cannot be produced by the applicant and the department has determined that the customer is unable to provide the history ~~[due to the inability to locate the previous owners]~~. Missing ownership documentation may consist of a certificate of title, bill of sale, invoice, or tax affidavit signed by the owner of record, or authority to handle a deceased person's estate. The inability to obtain the required documentation from the ~~[locate]~~ previous owner(s) or applicable lien holders ~~[owners]~~ must be evidenced by one of the following:

(1) notice of verified mail, as defined in Property Code, §59.043(c), as mail considered delivered when the notice, properly addressed with postage prepaid, is deposited with the United States Postal Service or a common carrier;

(2) proof of returned certified mail; or ~~[by]~~

(3) the lack of any known addresses for a previous owner.

(c) The department shall not under any circumstances issue a bonded title if the applicant does not have any proof of payment, ownership transfer or other related documentation to support a claim of ownership, unless the vessel or outboard motor is determined to be abandoned, as defined by Parks and Wildlife Code, §31.003(17).

(d) For a bonded title situation involving an abandoned vessel or outboard motor, the requirements of this subsection apply, in addition to any other requirements of this section or Parks and Wildlife Code, Chapter 31, Subchapters B and B-1.

(1) The applicant shall send notice via certified mail to the law enforcement agency in whose jurisdiction the property on which the abandoned vessel or outboard motor is located. The notice shall be on a form provided or prescribed by the department. The applicant shall provide a copy of the completed form and evidence of certified mailing to the department at the time the application for bonded title is submitted. The agency receiving the notification shall notify the applicant within 30 days of receipt of the notice of any intent to remove the vessel or outboard motor under the provisions of Transportation Code, §683.011.

(2) The department shall publish public notice of a qualified application for title to an abandoned vessel or outboard motor for a period of six consecutive months on the department's website. The publication shall take place within 10 days of receipt of the application by the department.

(A) If there is a documented claim of interest by a recorded owner or lien holder adverse to the applicant, the department shall not issue a title until the issue is resolved. The parties may apply to a court of competent jurisdiction for resolution.

(B) If there is no claim of interest, the applicant may proceed with consideration of the bonded title upon expiration of the six-month posting period.

(3) The department may employ the department's Boat Registration Information and Titling System (BRITS) and the Vessel Identification System (VIS) operated by the United States Coast Guard to determine the most recent owner of record of a vessel or outboard motor.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Ann Bright

General Counsel

Texas Parks and Wildlife Department

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For further information, please call: (512) 389-4775



CHAPTER 55. LAW ENFORCEMENT

SUBCHAPTER M. MANDATORY BOATING INCIDENT REPORT

31 TAC §55.850

The Texas Parks and Wildlife Department proposes new §55.850, concerning Mandatory Boating Incident Reporting. The proposed new rule would require the operator of a vessel involved in a collision, accident, or other casualty that results in death or injury to a person or property damage of greater than \$2,000 to report the incident to the department by no later than 30 days following the date the incident occurred.

House Bill 555 (HB 555), enacted by the 82nd Texas Legislature, Regular Session, 2011, amended Parks and Wildlife Code, §31.105 to require the operator of a vessel involved in a collision, accident, or other casualty that results in death or injury to a person or damage to property in excess of an amount set by the commission of not less than \$2,000 to report to the department on or before the expiration of 30 days after the incident a full description of the collision, accident, or casualty. The proposed new rule would establish a property damage reporting threshold of \$2,000 and implement regulations in compliance with the provisions of HB 555. The \$2,000 threshold is used because it is also the current threshold for mandatory incident reporting adopted by the United States Coast Guard (USCG) under the provisions of 33 CFR §§173.53 - 173.55.

Jeff Parrish, Deputy Chief for Water Safety Enforcement, has determined that for each year of the first five years that the rule as proposed is in effect, there will be no fiscal implications to state and local governments as a result of enforcing or administering the rule.

Mr. Parrish also has determined that for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be clear instructions as to the circumstances under which certain boating accidents are required to be reported, by whom, to whom, and by what methods.

There will be no adverse economic effect on persons required to comply with the rule as proposed.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose,

the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. Since the proposed rule does not affect small businesses or micro-businesses, the department has determined that the proposed new rule will not impose any direct adverse economic effects on small businesses or micro-businesses. Accordingly, the department has not prepared a regulatory flexibility analysis under Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedure Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

Comments on the proposed rule may be submitted to Jeff Parish, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4628; e-mail: jeff.parish@tpwd.state.tx.us.

The new rule is proposed under the authority of HB 555, which requires the department to adopt rules required to implement Parks and Wildlife Code, §31.105(a), as amended, not later than December 1, 2011.

The proposed new rule affects Parks and Wildlife Code, Chapter 31.

§55.850. Mandatory Boating Incident Report.

The operator of a vessel involved in a collision, accident, or other casualty that results in death or injury to a person or damage to property in excess of \$2,000 shall report to the department on or before the expiration of 30 days after the incident a full description of the collision, accident, or casualty. The report required by this section may be in writing, by phone, by electronic mail, or via the department web site.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Ann Bright

General Counsel

Texas Parks and Wildlife Department

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For further information, please call: (512) 389-4775



CHAPTER 57. FISHERIES

SUBCHAPTER A. HARMFUL OR POTENTIALLY HARMFUL FISH, SHELLFISH, AND AQUATIC PLANTS

31 TAC §§57.118, 57.120, 57.121, 57.126

The Texas Parks and Wildlife Department proposes amendments to §§57.118, 57.120, 57.121, and 57.126, concerning Harmful or Potentially Harmful Fish, Shellfish, and Aquatic Plants. The proposed amendments would update internal

references to Parks and Wildlife Code, Chapter 66, to reflect statutory changes to Chapter 66 made by Senate Bill 1480 (SB 1480), enacted by the 82nd Texas Legislature, Regular Session (2011). Prior to the enactment of SB 1480, the statutory provisions governing harmful and potentially harmful aquatic plants were contained in Parks and Wildlife Code, §66.007. As a consequence, the department's rules governing harmful and potentially harmful fish, shellfish, and aquatic plants cite that section. SB 1480 amended Parks and Wildlife, Chapter 66, to place all statutory provisions regarding harmful and potentially harmful exotic aquatic plants in a new section, §66.0072. The proposed amendments would add references to §66.0072 in order to accurately reflect the statutory basis for the department's rules governing permits with respect to harmful and potentially harmful exotic aquatic plants.

Dr. Earl Chilton, Program Director for Aquatic Habitat Enhancement, has determined that for each year of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the rules.

Dr. Chilton also has determined that for each year of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be rules that accurately reflect the applicable statutes upon which rules are promulgated and enforced.

There will be no adverse economic effect on persons required to comply with the rules as proposed.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. The department has determined that the proposed rules will not impose negative economic impacts on small businesses or micro-businesses. Accordingly, the department has not prepared a regulatory flexibility analysis under Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedure Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed amendments may be submitted to Earl Chilton, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4652; e-mail: earl.chilton@tpwd.state.tx.us.

The amendments are proposed under the authority of SB 1480, 82nd Texas Legislature, Regular Session (2011), which added

Parks and Wildlife Code, §66.0072 to authorize the commission to regulate by rule or permit the importation, possession, sale, and placement into the public water of this state exotic harmful or potentially harmful aquatic plants.

The proposed amendments affect Parks and Wildlife Code, Chapter 66.

§57.118. Exotic Species Permit Issuance.

- (a) (No change.)
- (b) The department may issue an exotic species permit upon a finding by the department that:
 - (1) - (2) (No change.)
 - (3) the applicant has complied with all provisions of the Parks and Wildlife Code, §§66.007, 66.0072, 66.015, and this subchapter [~~§66.007, §66.015, and these rules~~] during the one-year period preceding the date of application.

- (c) (No change.)

§57.120. Exotic Species Permit: Expiration and Renewal.

- (a) (No change.)
- (b) The department may renew an exotic species permit upon finding that:
 - (1) - (2) (No change.)
 - (3) the applicant has complied with all provisions of the Parks and Wildlife Code, §§66.007, 66.0072, 66.015, and this subchapter [~~§66.007, §66.015, and these rules~~] during the one-year period preceding the date of agency action on the application for renewal; and
 - (4) (No change.)

§57.121. Exotic Species Permit--Amendment.

- (a) Exotic species permits may be amended upon a finding by the department that:
 - (1) the applicant has complied with all provisions of the Parks and Wildlife Code, §§66.007, 66.0072, 66.015 [~~§66.007, §66.015~~], all provisions of the permit, and this subchapter [~~these rules~~] during the one-year period preceding the date of application;
 - (2) - (3) (No change.)
- (b) - (c) (No change.)

§57.126. Triploid Grass Carp Permit; Terms of Issuance.

- (a) The department may issue a triploid grass carp permit upon a finding that:
 - (1) - (3) (No change.)
 - (4) applicant has not been finally convicted, within the last year, for violation of the Parks and Wildlife Code, §§66.007, 66.0072, 66.015, or this subchapter [~~§66.007, §66.015, or these rules~~];
 - (5) - (9) (No change.)
- (b) - (c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Ann Bright
General Counsel
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

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CHAPTER 58. OYSTERS AND SHRIMP
SUBCHAPTER A. STATEWIDE OYSTER
FISHERY PROCLAMATION

31 TAC §§58.11, 58.21, 58.22

The Texas Parks and Wildlife Department proposes amendments to §§58.11, 58.21, and 58.22, concerning the Statewide Oyster Fishery Proclamation.

Over the past decade, many of the state's oyster reefs have disappeared and hundreds of thousands of cubic yards of cultch (material, such as oyster shell, that furnishes a place for larval oysters to attach and grow to maturity) have been removed from the state's public oyster reefs. The majority of the cultch removed from public reefs is not recovered and is often shipped out of state to be used as roadbed construction fill or feed additive in commercial poultry operations.

The 82nd Texas Legislature, Regular Session (2011), enacted Senate Bill 932 (SB 932), which amended Parks and Wildlife Code, Chapter 76, by adding new §76.021 to create the Oyster Shell Recovery and Replacement Program. The provisions of SB 932 require the adoption by rule of policies and procedures for the issuance of oyster shell recovery tags and provide for the collection of a fee for each box of oysters harvested by licensed commercial oyster fishermen from the waters of the state. SB 932 also amended Parks and Wildlife Code, §76.115, to authorize the Parks and Wildlife Commission (commission) to establish procedures and criteria by rule for closing oyster harvest areas when the commission finds that an area is being overworked or damaged or an area is to be reseeded or restocked, and to delegate that authority to the executive director of the department. The proposed amendments implement the provisions of SB 932 and alter regulations governing legal harvest hours and possession limits for commercial oyster harvest.

The proposed amendment to §58.11, concerning Definitions, would add definitions for the terms "harvester/shell recovery tag" and "director." Under the provisions of SB 932, the commission "by rule shall adopt policies and procedures for issuance of oyster shell recovery tags or other means to collect the fee" required by SB 932. The department has determined that the creation of a tag is the simplest and most feasible way to collect the fee and thus must define that term for purposes of compliance and enforcement. The proposed amendment would name the tag the Harvester/Shell Recovery Tag and define it as "an identifying marker that must be affixed to the outside of each sack of oysters at the time of harvest, in the location of harvest, contain information required by the Department of State Health Services under the National Shellfish Sanitation Program, and remain affixed during transportation of the oysters to a dealer." SB 932 also authorizes the commission to delegate the authority to open and close oyster reefs to the executive director of the department. The proposed amendment to §58.11 therefore adds a definition of "director" to mean the Executive Director of the Texas Parks and Wildlife Department. In another rulemaking published elsewhere in this issue of the *Texas*

Register, the department proposes to establish a fee for the tag at \$0.20, which is the fee established in SB 932.

The proposed amendment to §58.21, concerning Taking or Attempting to Take Oysters from Public Oyster Beds: General Rules, would reduce the legal oystering hours, delegate to the executive director of the department the authority to open and close oyster areas, set forth the basis upon which the executive director may open or close an oyster area, prohibit the harvest of oysters from a closed area, and delete current subsection (c)(2), which establishes a closure that will expire on its own terms on September 1, 2011.

The current lawful hours for the harvest of oysters are from sunrise to sunset. The proposed amendment to §58.21(a)(2) would allow the harvest of oysters from sunrise until 3:30 p.m. Communications with the regulated community indicate that prices decline through time each season, which is believed to be a result of high harvest levels at the beginning of the season. Following extensive discussions with members of the regulated community, the department has determined that a reduction in the lawful harvest hours, combined with a possession limit reduction (contained in the proposed amendment to §58.22(c) in this rulemaking) could be used as a mechanism to delay a portion of the harvest, allowing the remaining oysters to take advantage of the fall spawning season, which should result in increased recruitment (recruitment refers to the amount of young oysters that successfully attach to cultch) and promote efficiency in utilizing oyster resources by distributing the harvest over more of the season, which should also result in a more stable price structure over the duration of the open season.

The proposed amendment to §58.21 also would alter subsection (c) by adding new paragraph (1) to delegate authority to the executive director of the department to close an oyster area upon finding that the area is being overworked or damaged, or the area needs to be reseeded or restocked, which is authorized by Section 3 of SB 932. The proposed amendment also adds new paragraph (2) to require the executive director, in determining the need for a closure of an area, to state the criteria used to determine that a closure is warranted. The proposed new paragraph is necessary because the department recognizes that an order to close an area should be based on clearly articulated biological reasoning. The proposed amendment also adds new paragraph (3) to echo the statutory requirement, added by SB 932, that the department consult with members of the oyster industry regarding the management of oyster beds in this state. The proposed amendment also adds new paragraph (4) to stipulate that "an area will include those designated by the Department of State Health Services as 'Approved' and 'Conditionally Approved' or other areas based on evaluation by the department." The proposed new paragraph is necessary to make clear that the department may close any area on the basis of resource management concerns, irrespective of determinations made by other agencies or entities. The proposed amendment also adds new paragraph (5) to prohibit the harvest of oysters in closed areas, which is necessary to provide a deterrent to unscrupulous persons and preserve the integrity of the program.

Current §58.21(c)(2) closes a specifically demarcated area of coastal waters to the harvest of oysters until September 1, 2011. The proposed amendment to §58.21 would eliminate subsection (c)(2) because it is no longer necessary.

The proposed amendment to §58.22, concerning Commercial Fishing, would reduce the commercial possession limit for oysters and set forth the tagging requirements for oyster sacks. As

noted previously in this preamble, oyster fishermen and dealers have indicated concerns related to price declines perceived to be related to high harvest levels early in the season. After consultation with the regulated community, the department has determined that a combination of reduced harvest hours and possession limits could be effective in promoting efficiency, sustaining the resource, and stabilizing prices. Therefore, in addition to curtailing the lawful harvesting hours (discussed previously in this preamble), the department also proposes to reduce the daily commercial possession limit to 50 sacks. The current limit is 90 sacks. The department assumes that to receive the benefits of a more stable market, each fisherman's daily harvest must be reduced from the current level of 90 sacks per day. The amendment establishes a daily possession limit of 50 sacks of oysters per day in an effort to subject the total availability of oysters in Texas to a slower rate of harvest throughout the season. This is expected to lengthen the productive part of the season and support a higher per-unit price throughout the season. In addition, the slower rate of harvest is expected to allow Texas oysters to remain in the marketing channels for longer periods of time during the year, aiding in the creation of more stable markets. The proposed amendment, if adopted, is expected to lengthen the productive (in terms of sacks landed per vessel) part of the season. The department believes that if landings can become more stable, a more stable average price throughout the season could be expected, which should create overall economic benefits for the industry.

The proposed amendment to §58.22 also would add new subsection (d) to set forth the tagging requirements for oyster fishermen. The proposed new subsection would require a person who harvests oysters from Texas waters for commercial purposes to immediately place a properly executed harvester/shell recovery tag on the outside of each sack, stipulate that a tag is properly executed only when it is filled out with the information required on the tag, and mandate that the tag must be placed on the outside of the sack immediately upon filling, prior to unloading, and remain until the sack is empty or retagged and thereafter kept on file for 90 days. As noted previously in this preamble, the department has determined that a tag is the most feasible method for collecting the oyster shell recovery fee required by SB 932. Under the current regulations of the Department of State Health Services (DSHS, 25 TAC §241.57(e)), each sack of molluscan shellfish (including oysters) transported by a harvester (oyster fisherman) or dealer is required to be tagged with a harvester's tag or a dealer's tag bearing information required under the federal National Shellfish Sanitation Program. Under Parks and Wildlife Code, §76.021(c)(2), as added by SB 932, the harvester/shell recovery tag will satisfy the regulatory requirements of DSHS and function in lieu of the harvester's or dealer's tag. Thus, the procedure for oyster fishermen will change very little, since they are already required to tag containers of oysters, and the harvester/shell recovery tag will simply replace the harvester's tag required by DSHS. In order for the department to ensure that the oyster shell recovery fee is being accurately collected (i.e., that tags are being used once per sack and only once per sack), and to prevent double-counting and other potential sources of confusion, the proposed amendment would require that all information required on a tag be entered on the tag and the tag be affixed prior to unloading any cargo. The proposed amendment would stipulate that the tag must be placed on the outside of the sack immediately upon filling, prior to unloading, and remain attached until the sack is emptied or retagged. In this fashion, the department will be able to ensure that licensed commercial oyster fisherman has purchased the required tag for

a sack of oysters, and that the tag cannot be used again on successive days. The requirement that tags be retained and kept on file for 90 days is intended to furnish the department with a starting point and a method for verifying activities in the event that investigations are necessary. The proposed amendment also would stipulate that the appropriate harvester/shell recovery tag be affixed to a sack of oysters regardless of the requirements of 25 TAC §241.57, which sets forth DSHS requirement regarding refrigeration and time constraints for the handling of oysters at certain times of the year. The department's intent is to remove any ambiguity concerning when and where the harvester/shell recovery tag is required to be used.

Lance Robinson, Coastal Fisheries Division Regional Director, has determined that for each year of the first five years that the proposed rules are in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the proposed rules.

Mr. Robinson also has determined that for each year of the first five years the rules as proposed are in effect, the public benefits anticipated as a result of enforcing or administering the rules as proposed will be increased oyster recruitment, a more stable average price of oysters throughout the season, and the recovery and enhancement of public oyster reefs.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, commission considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that there will be adverse economic effects on small businesses, micro-businesses, and persons required to comply with the amendments as proposed; however, those effects will be minimal, and short-term in nature. The department has determined that most if not all businesses affected by the proposed rules qualify as small or micro-businesses. To the extent that the proposed regulations reflect the provisions of SB 932, there would be no small business impact beyond the impact of SB 932. However, to provide a complete understanding of the possible impacts, the following is provided.

Under DSHS regulations (25 TAC §241.57(e)), each bag or container of molluscan shellfish (including oysters) transported by a harvester (oyster fisherman) or dealer is required to be tagged with a harvester's tag or a dealer's tag bearing information required under the federal National Shellfish Sanitation Program. Under Parks and Wildlife Code, §76.021(c)(2), as added by SB 932, the oyster shell recovery tag will satisfy the regulatory requirements of DSHS and function in lieu of the harvester's or dealer's tag. Thus, there will be no adverse economic impact on oyster fishermen other than the tag fee of \$0.20. The department consulted with representatives of the oyster industry to determine the current cost of compliance with DSHS tagging requirements, who reported that the current cost of compliance

was in the range of \$0.06 to \$0.08 per tag. Subtracting the current fee expense for the harvester's tag from the proposed fee for the oyster shell recovery tag yields a net increase in cost of compliance of between \$0.12 and \$0.14 per tag. Using the average number of sacks harvested over the last three years (757,198), the net increase in cost to license holders would range from \$90,864 to \$106,008, which, when divided by the number of license holders (638), yields an average increase in cost per license holder of between \$139 and \$169.

The purpose of the oyster shell recovery program is to generate funds to return shell to public oyster reefs, where the oyster shell will function as cultch for additional oyster production, which should result in increased availability of oysters for commercial harvest. Studies from Louisiana and Florida show that every dollar spent on restoration results in a \$20 economic benefit (Dugas 1988; Berrigan 1990); thus, the economic impact to small and micro-businesses should be positive over time. Also, as noted above, SB 932 requires a minimum fee of \$0.20 per tag; thus, the proposed tag fee could be set higher, but not lower, and it cannot be eliminated. In another rulemaking published elsewhere in this issue of the *Texas Register*, the department proposes to establish the fee for the tag at \$0.20.

The rules as proposed would reduce the daily limit on harvest of oysters from 90 sacks to 50 sacks per day. This is expected to reduce the total number of sacks harvested during the early portion of the season but should increase the number of sacks available for harvest during the later months. The effect of the proposed possession limit reduction, along with the curtailment of lawful harvesting hours, should provide a more stable and consistent price structure as well as an increased harvest opportunity over the course of the season by reducing the impacts caused by large numbers of fishermen converging on reef areas during the months of November and December.

Participation in the department's trip ticket reporting system is required for all commercial licensees, and furnishes accurate records of all commercial fishing activity, including in the oyster fishery. Using the reported daily landings per trip for the first three months of this year's season (November 2010 - January 2011), had a 50-sack daily possession limit been in effect this year, it would have resulted in a 24%, 25% and 33% reduction per month, respectively, in harvest. The corresponding average price per sack for this period fell by over 16%, from \$22.91 per sack in November to \$19.12 per sack in January, while the total number of trips dropped by more than 17% during the same time period. This year, over 52,000 sacks were harvested above the 50-sack level; under the rules as proposed, those oysters would have been available for harvest later in the season.

Implementation of a closure under the provisions of the proposed amendment to §58.21(c) could cause fishermen to relocate to other areas that are open, which might necessitate increased fuel costs to some fishermen but may be offset by the increased production and availability of oysters that would be expected when the closed area reopens.

The department has determined that the proposed rules will have very little impact upon local employment at the macro or micro level. As noted in the discussion of economic impacts to small and micro-businesses, the average per-license increase in cost as a result of the proposed fee for oyster shell recovery tags ranges from \$139 to \$168 per license-holder per year, which the department believes would not cause measurable changes in local employment. The department also notes that the proposed amendments should result in the increased harvest of more mar-

ketable oysters over time, which should more than compensate for increased costs of compliance associated with the proposed tag fee and any additional cost associated with increased effort.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

The department has determined that the proposed rules are in compliance with 31 TAC §505.11 (Actions and Rules Subject to the Coastal Management Program) and 31 TAC §505.22 (Consistency Required for New Rules and Rule Amendments Subject to the Coastal Management Program).

Comments on the proposed amendments may be submitted to Jeremy Leitz, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4333; e-mail: jeremy.leitz@tpwd.state.tx.us.

The amendments are proposed under the provisions of SB 932, as enacted by the 82nd Texas Legislature, Regular Session (2011), which amended Parks and Wildlife Code, Chapter 76, by adding new §76.021 to require the adoption by rule of policies and procedures for the issuance of harvester/shell recovery tags and provide for the collection of a fee for each box of oysters harvested by licensed commercial oyster fishermen from the waters of the state; authorize the commission to establish procedures and criteria by rule for closing oyster harvest areas when the commission finds that an area is being overworked or damaged or an area is to be reseeded or restocked; and to delegate that authority to the executive director of the department. The amendments are also proposed under Parks and Wildlife Code, §76.301, which authorizes the commission to regulate the taking, possession, purchase, and sale of oysters.

The proposed amendments affect Parks and Wildlife Code, Chapter 76.

§58.11. Definitions.

The following words and terms, when used in the subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (14) (No change.)

(15) Harvester/Shell Recovery Tag--An identifying marker that must be affixed to the outside of each sack of oysters at the time or harvest, in the location of harvest, contain information required by the Department of State Health Services under the National Shellfish Sanitation Program, and remain affixed during transportation of the oysters to a dealer.

(16) Director--The executive director of the department.

§58.21. Taking or Attempting to Take Oysters from Public Oyster Beds: General Rules.

(a) Seasons and Times.

(1) (No change.)

(2) Legal oystering hours--sunrise to 3:30 p.m. [~~sunset~~].

(b) (No change.)

(c) Area Closures.

[(4)] There is no open public season for oysters from areas declared to be restricted or prohibited by the [Texas] Department

of State Health Services or areas closed by the commission [~~Commission~~].

(1) The director may close an area to the taking of oysters upon finding that the area is being overworked or damaged or the area is to be reseeded or restocked, and may re-open the areas as provided in Parks and Wildlife Code, §76.115.

(2) An order to close an area shall state the criteria used by the director to determine that the closure is warranted.

(3) The department shall consult with members of the oyster industry regarding the management of oyster beds in the state.

(4) For the purposes of this section an area will include those designated by the Department of State Health Services as "Approved" and "Conditionally Approved" or other areas based on evaluation by the department.

(5) No person may harvest oysters in an area closed by order of the commission or the executive director.

[(2) Until September 1, 2011, the area eastward of a line beginning at the Intracoastal Waterway Channel Marker 4 at Sievers Cove (29° 25' 51.3", 94° 42' 46.2"), to Galveston Shellfish Marker A (29° 26' 17.2", 94° 43' 28.9"), to Galveston Shellfish Marker B (29° 26' 32.7", 94° 43' 54.5"), to Galveston Shellfish Marker C (29° 26' 57.5", 94° 44' 35.5"), to Galveston Shellfish Marker D (29° 27' 17.2", 94° 45' 07.9"), to Galveston Shellfish Marker E (29° 27' 39.0", 94° 45' 44.0"), to Galveston Shellfish Marker F (29° 28' 01.2", 94° 46' 20.7"), to Galveston Shellfish Marker G (29° 28' 19.7", 94° 46' 51.2"), to Galveston Shellfish Marker H (29° 28' 42.0", 94° 47' 28.0"), to Galveston Shellfish Marker I (29° 29' 13.2", 94° 46' 59.3"), to Galveston Shellfish Marker J (29° 29' 45.4", 94° 46' 29.6"), to Galveston Shellfish Marker K (29° 30' 14.6", 94° 46' 02.8"), to Galveston Shellfish Marker L (29° 30' 45.3", 94° 45' 34.5"), to the Smith Point Tide Gauge Piling (29° 31' 17.9", 94° 45' 04.5") will be closed to the harvest of oysters from public oyster bed (reef) during the open public season.]

§58.22. Commercial Fishing.

(a) - (b) (No change.)

(c) Possession Limits. It is unlawful to take in one day, for pay or the purpose of sale, barter, or exchange, or any other commercial purpose, or to have on board any licensed commercial oyster boat more than:

(1) 50 [90] sacks of culled oysters of legal size; or

(2) (No change.)

(d) Harvester/Shell Recovery Tag. A person who harvests oysters from Texas waters for commercial purposes shall, immediately upon harvest, attach a properly executed harvester/shell recovery tag to the outside of the sack in which the oysters are placed.

(1) A Harvester/Shell Recovery Tag is properly executed when all required information has been entered on the tag.

(2) The tag must be placed on the outside of the sack immediately upon filling, prior to unloading, and remain until the sack is empty or retagged and thereafter kept on file for 90 days.

(3) The appropriate harvester/shell recovery tag (green or white) must be affixed to the sack regardless of the season or whether the requirements of 25 TAC §241.57 (relating to Molluscan Shellfish Harvesting and Handling) apply.

(e) [(4)] Reporting Requirements [requirements]. A dealer who purchases or receives oysters directly from any person other than a licensed dealer must file a report with the department each month as prescribed under Parks and Wildlife Code, §66.019(c).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 8, 2011.

TRD-201102600

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: August 21, 2011

For further information, please call: (512) 389-4775



CHAPTER 65. WILDLIFE

SUBCHAPTER F. PERMITS FOR AERIAL MANAGEMENT OF WILDLIFE AND EXOTIC SPECIES

31 TAC §65.151, §65.152

The Texas Parks and Wildlife Department proposes amendments to §65.151 and §65.152, concerning Permits for Aerial Management of Wildlife and Exotic Species (hereafter, "aerial permits"). The proposed amendment to §65.151, concerning Definitions, would provide a meaning for the term "qualified landowner or landowner's authorized agent." The proposed amendment to §65.152, concerning General Rules, would allow qualified persons to contract for participation as a gunner or observer in the taking of depredating feral hogs or coyotes from a helicopter.

House Bill 716 (HB 716), enacted by the 82nd Texas Legislature, Regular Session, 2011, amended Parks and Wildlife Code, Chapter 43, Subchapter G, by adding new §43.1075, which allows a qualified landowner or landowner's agent, as determined by commission rule, to contract to participate as a hunter or observer in using a helicopter to take depredating feral hogs or coyotes under the authority of a permit issued under Parks and Wildlife, Chapter 43, Subchapter G.

The proposed amendment to §65.152, concerning Definitions, would define "qualified landowner or landowner's agent" as "a person who has not been convicted of, pleaded *nolo contendere* to, or received deferred adjudication for a violation of Parks and Wildlife Code that is a Class A misdemeanor or felony, other than a violation of Parks and Wildlife Code, Chapter 31; or been convicted, pleaded *nolo contendere* to, received deferred adjudication or pre-trial diversion for, or assessed a civil penalty for a violation of 16 U.S.C. §§3371 - 3378 (the Lacey Act)." The department believes that a person should be allowed to engage in the activity authorized under the provisions of HB 716, provided the person has not engaged in serious criminal behavior related to hunting and fishing laws. The definition excludes violations of Parks and Wildlife Code, Chapter 31 (the Water Safety Act), because the department believes that violations related to water safety are not germane to the subject of aerial management of wildlife.

Under current rule (§65.154(b)(1)), the department will not issue a permit for the aerial management of wildlife and exotic animals to a person if the applicant or any pilot named in the application has within one year immediately preceding the date of the application been convicted of any Class A Parks and Wildlife Code misdemeanor or Parks and Wildlife Code felony relating to

the management of wildlife or exotic animals by the use of aircraft. The purpose of the provision is to prevent persons who have been proven to exhibit disregard for statutes and regulations governing aerial wildlife management from obtaining permits, and the department believes that the current provisions are adequate and effective. The proposed amendment would, for the same reasons, apply a similar standard to persons seeking to contract with a permittee to participate as a gunner or observer in using a helicopter to take depredating feral hogs or coyotes, including provisions relating to convictions for violations of the federal Lacey Act.

The Lacey Act (16 U.S.C. §§3371 - 3378) is a federal law initially enacted in 1900 to address a gap in wildlife law enforcement that allowed poachers to evade state law enforcement by taking wildlife in violation of a state law and then selling the wildlife in another state. See, Anderson, Robert S., *The Lacey Act: America's Premier Weapon in the Fight Against Unlawful Wildlife Trafficking*, 16 Pub. Land L. Rev. 27 (1995). The Lacey Act, among other things, prohibits interstate trade in or movement of wildlife, fish, or plants taken, possessed, transported or sold in violation of state law. Lacey Act prosecutions are normally conducted by the United States Department of Justice in federal courts.

The denial of the ability to participate in the management of feral hogs or coyotes from a helicopter as a result of an adjudicative status listed in the proposed rules would not be automatic, but within the discretion of the department. Factors that may be considered by the department in determining whether to allow a person to participate in the aerial management of depredating feral hogs or coyotes based on adjudicative status include, but are not limited to, the seriousness of the offense, the number of offenses, the existence or absences of a pattern of offenses, the length of time between the offense and the permit application, the applicant's efforts towards rehabilitation, and the accuracy of the information provided by the applicant regarding the applicant's prior permit history.

The amendment to §65.154 would add new subsection (c) to allow a person holding a valid aerial permit to contract with a qualified landowner or landowner's authorized agent to participate as a gunner or observer in the taking of depredating feral hogs or coyotes from a helicopter, provided that the permittee possesses a valid, properly executed written landowner's authorization describing the activity. HB 716 allows a qualified landowner or landowner's agent, as determined by commission rule, to contract to participate as a hunter or observer in using a helicopter to take depredating feral hogs or coyotes under the authority of a permit issued under Parks and Wildlife, Chapter 43, Subchapter G. The proposed amendment would implement the statutory requirements and add the condition that a properly executed landowner authorization be possessed by the permittee. Under all other conditions, aerial management is conducted by non-paying gunners, who by federal law must be identified on a log maintained by the permittee. The requirement to possess a properly executed landowner authorization is intended to provide a tool to law enforcement by allowing enforcement personnel to be able to quickly and easily establish that personnel involved in the management of depredating feral hogs and coyotes are doing so as authorized agents of the landowner.

Scott Vaca, Assistant Chief for Wildlife Enforcement, has determined that for each year of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state and local governments as a result of enforcing or administering the rules.

Chief Vaca also has determined that for each year of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be the enhancement of the ability of landowners to control depredating feral hogs and coyotes.

There will be no adverse economic effect on persons required to comply with the rules as proposed.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. To the extent that the proposed rules affect small businesses or micro-businesses, the department has determined that any effects will be positive, since the rules authorize a permittee to contract for participation in aerial services, which reduces labor costs and potentially involves increased revenue (if the contract stipulates monetary compensation). Accordingly, the department has not prepared a regulatory flexibility analysis under Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedure Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed amendments may be submitted to Scott Vaca, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4626; e-mail: scott.vaca@tpwd.state.tx.us.

The amendments are proposed under HB 716, enacted by the 82nd Texas Legislature, Regular Session, 2011, which amended Parks and Wildlife Code, Chapter 43, Subchapter G, to allow a qualified landowner or landowner's agent, as determined by commission rule, to contract to participate as a hunter or observer in using a helicopter to take depredating feral hogs or coyotes under the authority of a permit issued under Parks and Wildlife, Chapter 43, Subchapter G; and under Parks and Wildlife Code, §43.109, which authorizes the commission to make regulations governing management of wildlife or exotic animals by the use of aircraft; including rules to prescribe forms and procedures for permit applications; establish procedures for the management of wildlife or exotic animals by the use of aircraft, limit the time and the place for which a permit is valid; prohibit acts; and require, limit, or prohibit any activity as necessary to implement that subchapter.

The proposed amendments affect Parks and Wildlife Code, Chapter 43, Subchapter G.

§65.151. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (10) (No change.)

(11) Qualified landowner or landowner's authorized agent-A person who has not:

(A) been convicted of, pleaded *nolo contendere* to, or received deferred adjudication for a violation of Parks and Wildlife Code that is a Class A misdemeanor or felony, not to include violations of Parks and Wildlife Code, Chapter 31; or

(B) convicted, pleaded *nolo contendere* to, received deferred adjudication or pre-trial diversion, or assessed a civil penalty for a violation of 16 U.S.C. §§3371 - 3378 (the Lacey Act).

§65.152. General Rules.

(a) - (b) (No change.)

(c) It is lawful for a person who holds a permit under the authority of Parks and Wildlife Code, Chapter 43, Subchapter G, to contract with a qualified landowner or landowner's authorized agent who wishes to act as a gunner or observer in the taking of depredating feral hogs or coyotes from a helicopter, provided that the permittee possesses a valid, properly executed landowner's authorization describing the activity.

(d) [(e)] A person commits an offense if:

(1) the person hunts, shoots, shoots at, kills, or attempts to kill from an aircraft any wildlife or exotic animals other than wildlife or exotic animals authorized by the permit and landowner's authorization;

(2) the person intentionally harasses, disturbs, hazes, or buzzes any wildlife or exotic animals by the use of an aircraft other than wildlife or exotic animals authorized in a permit and landowner's authorization;

(3) the person acts as a gunner, observer, or pilot during a flight related to management of wildlife or exotic animals from an aircraft, and has within one year immediately preceding the flight been convicted of a Class A Parks and Wildlife Code misdemeanor or Parks and Wildlife Code felony relating to the management of wildlife or exotic animals by the use of aircraft;

(4) the person pilots an aircraft to manage wildlife or exotic animals without a valid pilot's license as required by the Federal Aviation Administration;

(5) the person pays, barter, or exchanges anything of value to participate as a gunner or observer, except as may be otherwise provided in this subchapter;

(6) the person acting as a gunner or pilot under an aerial management permit takes or attempts to take any wildlife or exotic animals for any purpose other than is necessary for the protection of lands, water, wildlife, livestock, domesticated animals, human life, or crops, except that any wildlife or exotic animals, once lawfully taken pursuant to this subchapter may be sold if their sale is not otherwise prohibited;

(7) the person acting as a gunner or pilot hunts, takes, kills, manages or attempts to hunt, take, kill or manage wildlife or exotic animals during the hours between 1/2-hour after sunset and 1/2-hour before sunrise;

(8) the person operates an aircraft for the management of wildlife or exotic animals and is not named as an authorized pilot in a permit;

(9) the person takes, captures, or kills more wildlife or exotic animals on properties than are specified in the landowner's authorization; or

(10) the person uses a permit for the purpose of sport hunting.

(e) [(d)] These rules do not exempt any person from the requirement for other licenses or permits required by statute or rule of the commission.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 8, 2011.

TRD-201102601

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: August 21, 2011

For further information, please call: (512) 389-4775



SUBCHAPTER O. COMMERCIAL NONGAME PERMITS

31 TAC §§65.325, 65.327, 65.331

The Texas Parks and Wildlife Department proposes amendments to §§65.325, 65.327, and 65.331, concerning Commercial Nongame Permits.

The proposed amendment to §65.325, concerning Applicability, would update a cross reference to another rule governing the take and possession of diamondback terrapins. Prior to 2009, rules governing recreational and commercial fisheries were located in Chapter 65, Wildlife. In 2009, the department relocated those rules to Chapter 57, Fisheries. The proposed amendment replaces the current cross reference to Chapter 65 in subsection (b)(6) with an updated cross reference to Chapter 57.

The proposed amendment to §65.327, concerning Permit Required, would make several clarifying changes. In §65.327(b)(1)(D) and (E) and (2)(B), the proposed amendment would add language to make it clear that species of nongame wildlife that are on the "black list" (nongame species that may not be taken from the wild for commercial purposes in Texas) may be imported. Although the current rules allow the importation of "black list" species, the department has received comments indicating that this is not clearly stated. The change is nonsubstantive, since the practice is lawful under current rule.

The proposed amendment to §65.327 also would authorize commercial activity involving dead armadillos by holders of commercial nongame and commercial nongame dealer's permits. Under Parks and Wildlife Code, §63.103, no person may sell or possess for the purpose of sale a live armadillo. The proposed amendment would allow commercial activities involving dead armadillos in accordance with the privileges already established for nongame wildlife for each class of permit and would reiterate the statutory provision prohibiting the sale of live armadillos.

The proposed amendment to §65.327 also would alter subsection (b)(4) to correct an oversight. The current rule provides a permit exception for the sale of species of nongame wildlife on

the "white list" (species of nongame wildlife that may be collected or possessed for commercial purposes) as food items prepared for immediate consumption. The department has determined that technically, the current exception inadvertently does not apply to three species of turtles listed in §65.331(b), which is unintended. The proposed amendment would amend the reference to §65.331 to add a reference to §65.331(b).

The proposed amendment to §65.331, concerning Commercial Activity, would remove all species of bats from the provisions of the subchapter. Parks and Wildlife Code, §63.101, prohibits the hunting, sale, offer for sale, purchase, offer to purchase, and possession after purchase of bats or any part of a bat. Although the current rules include all species of indigenous bats on the "black list," which prohibits their collection for commercial purposes, there is a conflict between the absolute statutory prohibition and provisions of the current rules that allow possession of "black list" species for noncommercial purposes and the importation of "black list" species for commercial purposes. Therefore, the proposed amendment would eliminate bats from the black list, which would eliminate all conflict with the provisions of the Parks and Wildlife Code.

John Young, Staff Mammologist, has determined that for each year of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state and local governments as a result of enforcing or administering the rules.

Mr. Young also has determined that for each year of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be accurate references, clear regulatory language, elimination of regulatory conflicts, and the opportunity for enjoyment of the benefits of nongame wildlife within the tenets of sound biological management.

There will be no adverse economic effect on persons required to comply with the rules as proposed.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect affect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. Since the proposed rules do not affect small businesses or micro-businesses, the department has determined that the proposed amendments will not impose any direct adverse economic effects on small businesses or micro-businesses. Accordingly, the department has not prepared a regulatory flexibility analysis under Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedure Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed amendments may be submitted to John Young, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8047; e-mail: john.young@tpwd.state.tx.us.

The amendments are proposed under the authority of Parks and Wildlife Code, §67.004, which authorizes the commission to establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species; and §67.0041, which authorizes the department to issue permits for the taking, possession, propagation, transportation, sale, importation, or exportation of a nongame species of fish or wildlife if necessary to properly manage that species.

The proposed amendments affect Parks and Wildlife Code, Chapter 67.

§65.325. *Applicability.*

- (a) (No change.)
- (b) Exceptions. This subchapter does not apply to the following nongame wildlife:
 - (1) - (5) (No change.)
 - (6) diamondback terrapin (*Malaclemys terrapin*), which are addressed under the provisions of §57.972 of this title (relating to General Rules) [~~§65.82 of this title (relating to Other Aquatic Life)~~]; or
 - (7) (No change.)
- (c) (No change.)

§65.327. *Permit Required.*

- (a) (No change.)
- (b) Permit Privileges and Restrictions.
 - (1) The holder of a valid nongame dealer permit may:
 - (A) collect nongame wildlife listed in §65.331(b) and (d) [~~§65.331(d)~~] of this title (relating to Commercial Activity) from the wild;
 - (B) - (C) (No change.)
 - (D) import nongame wildlife, including species listed in §65.331(e) of this title, into Texas for any purpose, including sale or resale, or for purposes of export, provided the person:
 - (i) - (iv) (No change.)
 - (E) export lawfully obtained nongame wildlife, including species listed in §65.331(e) of this title, from Texas for any reason, including sale or resale, provided the person:
 - (i) - (ii) (No change.)
 - (F) engage in captive breeding of all species of nongame wildlife; and[-]
 - (G) possess, transport, purchase, sell, resell, import, or export dead armadillos (*Dasypus novemcinctus*); however, the possession, transportation, sale, resale, import, or export of live armadillos is prohibited under Parks and Wildlife Code, §63.103.

- (2) The holder of a valid nongame permit:
 - (A) (No change.)

(B) may purchase or acquire nongame wildlife, including species listed in §65.331(e) of this title, from the holder of a valid nongame dealer permit or lawful out-of-state source; but

(C) may sell only to the holder of a valid nongame dealer permit; and[-]

(D) may possess, transport, purchase, sell, resell, import, or export dead armadillos (*Dasypus novemcinctus*), however:

(i) dead armadillos may be sold only to the holder of a valid nongame dealer permit; and

(ii) the possession, transportation, sale, resale, import, or export of live armadillos is prohibited under Parks and Wildlife Code, §63.103.

(3) (No change.)

(4) A permit is not required for any person to sell nongame wildlife listed in §65.331(b) or (d) [~~§65.331(d)~~] of this title for and ready for immediate consumption in individual portion servings, and which are subject to limited sales or use tax, provided the person maintains a receipt identifying the source of the nongame wildlife.

(5) - (6) (No change.)

(c) - (e) (No change.)

§65.331. *Commercial Activity.*

(a) - (d) (No change.)

(e) No person shall engage in commercial activity involving any nongame species not listed in subsection (d) of this section, except as provided in §65.327 of this title (relating to Permit Required) and subsection (b) of this section. This prohibition on commercial activity includes, but is not limited to, the following species:
Figure: 31 TAC §65.331(e)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-201102602

Ann Bright

General Counsel

Texas Parks and Wildlife Department

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For further information, please call: (512) 389-4775



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 3. TEXAS YOUTH COMMISSION

CHAPTER 91. PROGRAM SERVICES

SUBCHAPTER D. HEALTH CARE SERVICES

The Texas Youth Commission (TYC) simultaneously proposes the repeal of §91.91, concerning psychopharmacotherapy and new §91.91, concerning psychopharmacotherapy.

New §91.91 has been restructured to provide better organization of sections relating to prescribing psychotropic medication and psychotropic medication administration. Additionally, the new rule clarifies in more detail than the existing rule that psychopharmacotherapy is an established method of treatment for

TYC youth exhibiting symptoms of mental illness, mental disorder, or emotional distress. The new rule also clarifies that psychotropic medication may only be prescribed in accordance with an established treatment plan after a youth has received nursing, medical, and mental health screenings and evaluations. The new rule further clarifies that psychotropic medication shall be prescribed only to a youth who meets the current Diagnostic and Statistical Manual criteria for a psychiatric disorder and the schedule and dosage of prescribed psychotropic medication are consistent with established community standards of care and nationally accepted practice guidelines.

Janie Ramirez Duarte, Acting Chief Financial Officer, has determined that for the first five-year period the sections are in effect, there will be no significant fiscal impact for state or local government as a result of enforcing or administering the sections.

Rajendra Parikh, M.D., has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections will be to provide for a safe and healthy environment for youth in TYC regarding prescribing of psychotropic medication.

There will be no effect on small businesses or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted within 30 days of the publication of this notice to Erica Knutsen, Policy Writer, Texas Youth Commission, P.O. Box 4260, Austin, Texas 78765, or email to policy.proposals@tyc.state.tx.us.

37 TAC §91.91

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Youth Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal is proposed under Human Resources Code §61.034, which provides TYC with the authority to make rules appropriate to the proper accomplishment of its functions.

The proposed repeal implements Human Resources Code, §61.034.

§91.91. Psychopharmacotherapy.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 8, 2011.

TRD-201102608

Cheryl K. Townsend

Executive Director

Texas Youth Commission

Earliest possible date of adoption: August 21, 2011

For further information, please call: (512) 424-6475



37 TAC §91.91

The new rule is proposed under: (1) Human Resources Code §61.0711, which authorizes the commission to deliver any medical, behavioral health, or rehabilitation services provided to a child in the custody of the commission; and (2) Human Resources Code §61.076, which authorizes the commission to

provide any necessary medical or psychiatric treatment to youth committed to its care.

The proposed rule implements Human Resources Code, §61.034.

§91.91. Psychopharmacotherapy.

(a) Purpose. The purpose of this policy is to provide for the use of psychopharmacotherapy as an established method of treatment for Texas Youth Commission (TYC) youth exhibiting symptoms of mental illness, mental disorder, or emotional distress in accordance with an established treatment plan.

(b) General Provisions. Under no circumstances are tranquilizers, psychostimulants, or other psychotropic medications administered for purposes of discipline, security, control, sleep aid (unless sleep disturbance is related to a primary mental health diagnosis), or experimental research.

(c) Prescribing Psychotropic Medication.

(1) Unless psychotropic medication is being prescribed for purposes of ensuring continuity of care upon admission or transfer, psychotropic medication may only be prescribed in accordance with an established treatment plan after a youth has received nursing, medical, and mental health screenings and evaluations.

(2) Psychotropic medication shall be prescribed only to a youth who meets the current Diagnostic and Statistical Manual criteria for a psychiatric disorder. During the intake and placement process, a chart review, psychiatric evaluation, and/or psychotropic medication review shall be performed by the treating psychiatric provider prior to continuing, initiating, or changing a psychotropic medication order. Indication for the psychopharmacotherapy must be documented. Every effort will be made to ensure that prescribing of psychotropic medication is a collaborative effort between the psychiatric provider and the youth, necessitating, whenever reasonable or possible, the sharing of information such as treatment objectives, disadvantages, available alternatives, and side effects.

(3) The schedule and dosage of prescribed psychotropic medication are consistent with established community standards of care and nationally accepted practice guidelines. If there is a departure from these standards or guidelines, the psychiatric provider must clearly document his/her rationale.

(4) Standing orders will not be utilized for prescribing psychotropic medication, except where psychiatric mid-level practitioners are used to provide services under a supervising psychiatrist. The use of standing orders shall comply with applicable state regulations.

(d) Psychotropic Medication Administration.

(1) The preferred method of medication administration will be the oral route unless there is documentation of specific contraindications.

(2) Psychotropic medication may not be administered against the will of a youth except in a psychiatric emergency as specified in §91.92 of this title.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-201102609

Cheryl K. Townsend
Executive Director
Texas Youth Commission
Earliest possible date of adoption: August 21, 2011
For further information, please call: (512) 424-6475



TITLE 43. TRANSPORTATION

PART 3. AUTOMOBILE BURGLARY AND THEFT PREVENTION AUTHORITY

CHAPTER 57. AUTOMOBILE BURGLARY AND THEFT PREVENTION AUTHORITY

43 TAC §57.58

The Automobile Burglary and Theft Prevention Authority (ABTPA) proposes new §57.58, concerning Licensure of Intellectual Property. The proposed new §57.58 includes language to authorize ABTPA to apply for, register, secure, hold, license, and protect copyrights, trademarks, patents, or other evidence of protection or exclusivity. ABTPA may receive license fees, royalties, or other consideration for the use of its intellectual property. This new rule prescribes the policies and procedures governing the protection of ABTPA intellectual property, and the use of ABTPA intellectual property by third parties.

Charles Caldwell, Director of the ABTPA, has determined that for the first five-year period the new rule is in effect, there will be no additional fiscal implications for state and local governments as a result of enforcing or administering the proposed new rule.

Mr. Caldwell has also determined that, for each of the first five years the proposed new rule will be in effect, the public benefit anticipated will be better monitoring of the use of ABTPA intellectual property. The expenditure and accountability for use of state funds will be accurate and reported consistently with the statewide reporting.

Mr. Caldwell has also determined that, for each of the first five years the proposed new rule will be in effect, there is no anticipated economic cost to persons required to comply with the new rule as proposed. There is no effect on a local economy. There is no anticipated adverse economic effect on micro or small businesses as a result of the proposed new rule.

Comments on the proposed new rule may be submitted to Charles Caldwell, Director, Automobile Burglary and Theft Prevention Authority, 4000 Jackson Avenue, Austin, Texas 78731, for a period of 30 days from the date that the proposed action is published in the *Texas Register*.

The new rule is proposed under Texas Civil Statutes, Article 4413(37), §6(a), which the Authority interprets as authorizing it to adopt rules implementing its statutory powers and duties.

The following are the statutes, articles, or codes affected by the new rule: Article 4413(37), §6(a).

§57.58. Licensure of Intellectual Property.

(a) ABTPA may authorize the licensure of ABTPA owned intellectual property.

(b) ABTPA will determine the monetary value of ABTPA intellectual property and will set license fees.

(1) In determining an appropriate fee for licensure of ABTPA intellectual property, ABTPA will consider the:

- (A) commercial rates for comparable property;
- (B) development cost;
- (C) intended use of the property;
- (D) private or public status of the requestor; and
- (E) primary beneficiary of the license.

(2) ABTPA may waive or reduce the amount of fees, royalties, or other monetary value to be assessed if the ABTPA determines that such waiver or reduction will further the goals and missions of the ABTPA and result in a net benefit to the state. In making this determination, ABTPA will consider whether:

- (A) the licensee is a governmental entity;
- (B) the intellectual property will be used for a commercial purpose;
- (C) ABTPA is the primary beneficiary of the licensee's use of the intellectual property; and
- (D) ABTPA has an interest in maximizing the distribution and use of the intellectual property.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 1, 2011.

TRD-201102513

Charles Caldwell

Director

Automobile Burglary and Theft Prevention Authority

Earliest possible date of adoption: August 21, 2011

For further information, please call: (512) 374-5101



WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 175. FEES AND PENALTIES

22 TAC §175.1

The Texas Medical Board withdraws the proposed amendments to §175.1, which appeared in the May 20, 2011, issue of the *Texas Register* (36 TexReg 3169).

Filed with the Office of the Secretary of State on July 11, 2011.

TRD-201102622

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: July 11, 2011

For further information, please call: (512) 305-7016



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 9. TITLE INSURANCE

SUBCHAPTER A. BASIC MANUAL OF RULES, RATES AND FORMS FOR THE WRITING OF TITLE INSURANCE IN THE STATE OF TEXAS

28 TAC §9.50

Proposed new §9.50, published in the December 31, 2010, issue of the *Texas Register* (35 TexReg 11791), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on July 6, 2011.

TRD-201102552



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 9. TEXAS COMMISSION ON JAIL STANDARDS

CHAPTER 259. NEW CONSTRUCTION RULES

SUBCHAPTER E. NEW MINIMUM SECURITY DESIGN, CONSTRUCTION AND FURNISHING REQUIREMENTS

37 TAC §259.413

Proposed amended §259.413, published in the December 31, 2010, issue of the *Texas Register* (35 TexReg 11831), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on July 6, 2011.

TRD-201102553



37 TAC §259.418

Proposed amended §259.418, published in the December 31, 2010, issue of the *Texas Register* (35 TexReg 11832), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on July 6, 2011.

TRD-201102554



37 TAC §259.453

Proposed amended §259.453, published in the December 31, 2010, issue of the *Texas Register* (35 TexReg 11832), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on July 6, 2011.

TRD-201102555



SUBCHAPTER F. TEMPORARY HOUSING--TENTS

37 TAC §259.514

Proposed amended §259.514, published in the December 31, 2010, issue of the *Texas Register* (35 TexReg 11833), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on July 6, 2011.

TRD-201102556



37 TAC §259.520

Proposed amended §259.520, published in the December 31, 2010, issue of the *Texas Register* (35 TexReg 11833), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on July 6, 2011.

TRD-201102557



SUBCHAPTER G. TEMPORARY HOUSING--BUILDINGS

37 TAC §259.614

Proposed amended §259.614, published in the December 31, 2010, issue of the *Texas Register* (35 TexReg 11833), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on July 6, 2011.

TRD-201102558



37 TAC §259.620

Proposed amended §259.620, published in the December 31, 2010, issue of the *Texas Register* (35 TexReg 11834), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on July 6, 2011.

TRD-201102559



SUBCHAPTER H. NEW LONG-TERM INCARCERATION DESIGN, CONSTRUCTION AND FURNISHING REQUIREMENTS

37 TAC §259.715

Proposed amended §259.715, published in the December 31, 2010, issue of the *Texas Register* (35 TexReg 11834), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on July 6, 2011.

TRD-201102560



37 TAC §259.722

Proposed amended §259.722, published in the December 31, 2010, issue of the *Texas Register* (35 TexReg 11835), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on July 6, 2011.

TRD-201102561



37 TAC §259.723

Proposed amended §259.723, published in the December 31, 2010, issue of the *Texas Register* (35 TexReg 11835), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on July 6, 2011.

TRD-201102562



37 TAC §259.769

Proposed amended §259.769, published in the December 31, 2010, issue of the *Texas Register* (35 TexReg 11835), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on July 6, 2011.

TRD-201102563



CHAPTER 260. COUNTY CORRECTIONAL CENTERS

SUBCHAPTER B. CCC DESIGN, CONSTRUCTION AND FURNISHING REQUIREMENTS

37 TAC §260.113

Proposed amended §260.113, published in the December 31, 2010, issue of the *Texas Register* (35 TexReg 11836), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on July 6, 2011.

TRD-201102564



37 TAC §260.118

Proposed amended §260.118, published in the December 31, 2010, issue of the *Texas Register* (35 TexReg 11836), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on July 6, 2011.

TRD-201102565

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37 TAC §260.161

Proposed amended §260.161, published in the December 31, 2010, issue of the *Texas Register* (35 TexReg 11837), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on July 6, 2011.

TRD-201102566

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CHAPTER 261. EXISTING CONSTRUCTION RULES

SUBCHAPTER A. EXISTING MAXIMUM SECURITY DESIGN, CONSTRUCTION AND FURNISHING REQUIREMENTS

37 TAC §261.115

Proposed amended §261.115, published in the December 31, 2010, issue of the *Texas Register* (35 TexReg 11837), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on July 6, 2011.

TRD-201102567

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37 TAC §261.122

Proposed amended §261.122, published in the December 31, 2010, issue of the *Texas Register* (35 TexReg 11838), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on July 6, 2011.

TRD-201102568

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37 TAC §261.167

Proposed amended §261.167, published in the December 31, 2010, issue of the *Texas Register* (35 TexReg 11838), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on July 6, 2011.

TRD-201102569

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SUBCHAPTER B. EXISTING LOCKUP DESIGN, CONSTRUCTION AND FURNISHING REQUIREMENTS

37 TAC §261.215

Proposed amended §261.215, published in the December 31, 2010, issue of the *Texas Register* (35 TexReg 11838), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on July 6, 2011.

TRD-201102570

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37 TAC §261.222

Proposed amended §261.222, published in the December 31, 2010, issue of the *Texas Register* (35 TexReg 11839), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on July 6, 2011.

TRD-201102571

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37 TAC §261.262

Proposed amended §261.262, published in the December 31, 2010, issue of the *Texas Register* (35 TexReg 11839), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on July 6, 2011.

TRD-201102572

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SUBCHAPTER C. EXISTING MINIMUM SECURITY DESIGN, CONSTRUCTION AND FURNISHING REQUIREMENTS

37 TAC §261.312

Proposed amended §261.312, published in the December 31, 2010, issue of the *Texas Register* (35 TexReg 11840), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on July 6, 2011.

TRD-201102573

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37 TAC §261.317

Proposed amended §261.317, published in the December 31, 2010, issue of the *Texas Register* (35 TexReg 11840), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on July 6, 2011.

TRD-201102574

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Filed with the Office of the Secretary of State on July 6, 2011.

TRD-201102575

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37 TAC §261.357

Proposed amended §261.357, published in the December 31, 2010, issue of the *Texas Register* (35 TexReg 11840), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 25. SCHOOL HEALTH AND RELATED SERVICES

1 TAC §354.1341, §354.1342

The Texas Health and Human Services Commission (HHSC) adopts the amendments to §354.1341, concerning Benefits and Limitations; and §354.1342, concerning Conditions for Participation, concerning the School Health and Related Services (SHARS) program, without changes to the proposed text as published in the April 29, 2011, issue of the *Texas Register* (36 TexReg 2641) and will not be republished.

Background and Justification

SHARS is a joint program of HHSC and the Texas Education Agency that allows school districts to obtain federal Medicaid reimbursement for the provision of health-related services to students with disabilities. The amendments provide clarity and consistency with the current Medicaid state plan for SHARS, including time study and cost report requirements.

Comments

The 30-day comment period ended May 29, 2011. HHSC did not receive any comments regarding the proposed amendments.

Legal Authority

The amendments are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 6, 2011.

TRD-201102530

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Effective date: October 1, 2011

Proposal publication date: April 29, 2011

For further information, please call: (512) 424-6900



SUBCHAPTER F. PHARMACY SERVICES DIVISION 8. DRUG UTILIZATION REVIEW BOARD

1 TAC §354.1941

The Texas Health and Human Service Commission (HHSC) adopts new §354.1941, concerning a conflict of interest policy for the Medicaid Drug Utilization Review (DUR) Board, without changes to the proposed text as published in the April 15, 2011, issue of the *Texas Register* (36 TexReg 2306) and will not be republished.

Background and Justification

The Medicaid DUR Board is composed of physicians and pharmacists who meet on a quarterly basis to determine criteria for retrospective and prospective prescription drug utilization.

House Bill (H.B.) 2030, 81st Legislature, Regular Session, 2009, requires the establishment of a conflict of interest policy for the members of the Medicaid DUR Board. The bill created §531.0692 of the Texas Government Code, which requires that DUR Board members not have a contractual relationship, ownership interest, or other conflict of interest with a pharmaceutical manufacturer or labeler or with an entity engaged by HHSC. The HHSC Executive Commissioner is given the authority to implement a conflict of interest policy either by adopting rules or by requiring the board to develop a conflict of interest policy.

The new rule outlines the conflict of interest policy that each DUR Board member must agree to uphold for the duration of their term on the board. Board members will be required to sign and date a form disclosing any potential conflicts of interest.

Comments

The 30-day comment period ended May 15, 2011. During this period, HHSC did not receive comments regarding the new rule.

Legal Authority

The new section is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal

medical assistance (Medicaid) program in Texas; and Texas Government Code §531.0692, which gives the Executive Commissioner authority to adopt rules that identify prohibited relationships and conflicts for members of the Texas Medicaid Drug Utilization Review Board.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 11, 2011.

TRD-201102615

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Effective date: September 1, 2011

Proposal publication date: April 15, 2011

For further information, please call: (512) 424-6900



CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER B. ESTABLISHMENT AND ADJUSTMENT OF REIMBURSEMENT RATES BY THE HEALTH AND HUMAN SERVICES COMMISSION

1 TAC §355.201

The Texas Health and Human Services Commission (HHSC) adopts the amendment to §355.201, concerning the establishment and adjustment of reimbursement rates by the Health and Human Services Commission, without changes to the proposed text as published in the April 15, 2011, issue of the *Texas Register* (36 TexReg 2319) and will not be republished.

Background and Justification

The amendment to §355.201 is adopted to clarify that HHSC may establish fees, rates, and charges for Medicaid services in accordance with state and federal policies, rules, regulations, or guidelines, in addition to state or federal law, as authorized by §531.021(d)(2) of the Government Code. The amendment also clarifies that: (1) reimbursements may be adjusted under this rule if state or federal law is implemented in a way that requires such an adjustment; and (2) notice of an adjustment of a fee, rate, or charge can appear either on the HHSC website or in the *Texas Register* to comply with notice requirements in §32.0282 of the Human Resources Code. Finally, the amendment removes the requirement that the content of a notice of an adjustment of a fee, rate, or charge must include the period during which the adjustment will be in effect, because the duration of the adjustment often cannot be determined at the time of the notice.

Comments

The 30-day comment period ended May 15, 2011. During this period, HHSC did not receive any comments regarding the proposed amendment.

Legal Authority

The amendment is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources

Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 11, 2011.

TRD-201102616

Steve Aragon

Chief Counsel

Texas Health and Human Service Commission

Effective date: September 1, 2011

Proposal publication date: April 15, 2011

For further information, please call: (512) 424-6900



SUBCHAPTER C. REIMBURSEMENT METHODOLOGY FOR NURSING FACILITIES

1 TAC §355.306

The Texas Health and Human Services Commission (HHSC) adopts the amendment to §355.306, concerning Cost Finding Methodology, without changes to the proposed text as published in the April 15, 2011, issue of the *Texas Register* (36 TexReg 2321) and will not be republished.

Background and Justification

This rule establishes the cost finding methodology for the Nursing Facility program, including details on when providers are excused from submitting cost reports.

Effective for nursing facility services delivered on September 1, 2009, and thereafter, cost reports replaced Staffing and Compensation Reports as the reports used to determine participating providers' compliance with their Direct Care Staff Rate enhancement requirements. As a result of this change, cost-reporting requirements vary depending on whether the provider participates in the Direct Care Staff Rate enhancement program. Providers participating in rate enhancement may no longer be wholly relieved of the obligation to file cost reports. All providers that participate in the rate enhancement program must file a cost report, as described in §355.308 of this title (relating to Direct Care Staff Rate Component). Cost-reporting requirements for providers participating in the rate enhancement, including the submission of abbreviated cost reports in certain situations in which cost reports had previously been excused, are detailed in §355.308(f)(2).

This amendment modifies the cost-reporting requirements in §355.306(a) so that it is clear that subsection (a) applies only to providers not participating in the rate enhancement and will direct providers participating in the rate enhancement to §355.308(f)(2) for details on their cost-reporting requirements.

Comments

The 30-day comment period ended May 16, 2011. During this period, HHSC received no comments regarding the proposed amendments to this rule.

Legal Authority

The amendment is adopted under the Texas Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties; Texas Human Resources Code §32.021 and the Texas Government Code §531.021(a), which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 5, 2011.

TRD-201102518

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Effective date: September 1, 2011

Proposal publication date: April 15, 2011

For further information, please call: (512) 424-6900



SUBCHAPTER F. REIMBURSEMENT METHODOLOGY FOR PROGRAMS SERVING PERSONS WITH MENTAL ILLNESS AND MENTAL RETARDATION

The Texas Health and Human Services Commission (HHSC) adopts the repeals of §355.741, concerning Definitions for Service Coordination and Targeted Case Management, and §355.742, concerning Service Limitations for Mental Retardation Service Coordination and Targeted Case Management; and the amendment to §355.743, concerning Reimbursement Methodology for Mental Health Case Management. The repeals and amendment are adopted without changes to the proposed text as published in the April 22, 2011, issue of the *Texas Register* (36 TexReg 2579) and will not be republished.

Background and Justification

The repeals of §355.741 and §355.742 are adopted to remove duplicative information concerning the reimbursement methodology for certain programs serving people with mental illness and people with intellectual or developmental disabilities. The information has been incorporated into the cost determination process rules and other agency program rules or policy.

The amendment to §355.743 is adopted to eliminate the current cost settlement process and implement a prospective uniform statewide reimbursement rate methodology for Mental Health Case Management.

The Centers for Medicare and Medicaid Services (CMS) informed HHSC that the current cost settlement process for Mental Health Case Management was not acceptable and that the cost settlement process would need to be either changed or eliminated. The amendment to §355.743 eliminates the cost settlement methodology and replaces it with a prospective uni-

form statewide reimbursement rate, which CMS has indicated is acceptable.

The amendment and repeals are also adopted to clarify current requirements for the Mental Health Case Management program and to delete outdated information.

Comments

The 30-day comment period ended May 22, 2011. During this period, HHSC did not receive any comments regarding the proposed amendment and repeals.

1 TAC §355.741, §355.742

Legal Authority

The repeals are adopted under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 5, 2011.

TRD-201102519

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Effective date: September 1, 2011

Proposal publication date: April 22, 2011

For further information, please call: (512) 424-6900



1 TAC §355.743

Legal Authority

The amendment is adopted under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 5, 2011.

TRD-201102520

◆ ◆ ◆
1 TAC §355.746

The Texas Health and Human Services Commission (HHSC) adopts the amendment to §355.746, concerning Reimbursement Methodology for Mental Retardation (MR) Service Coordination, with changes to the proposed text as published in the April 15, 2011, issue of the *Texas Register* (36 TexReg 2347). The text of the rule will be republished.

Background and Justification

The Centers for Medicare and Medicaid Services (CMS) informed HHSC that the current monthly unit of service for Mental Retardation Service Coordination was not acceptable and that it would need to be changed. HHSC is adopting the amendment to §355.746 to implement a prospective uniform statewide reimbursement rate methodology by eliminating the monthly unit of service and replacing it with an encounter unit of service methodology.

The amendment defines two types of encounters. The first type of encounter is a monthly comprehensive face-to-face contact with the client (Encounter Type A) and the second is a follow-up encounter (Encounter Type B). The follow-up encounter is a face-to-face, telephone, or telemedicine contact with either the client or collateral individual. A provider is limited to three follow-up encounters per calendar month for each comprehensive encounter that occurred within the calendar month. CMS has indicated that an encounter unit of service is acceptable.

Comments

The 30-day comment period ended May 15, 2011. During this period, HHSC did not receive any comments regarding the proposed amendments to the rule; however, HHSC made minor changes to the proposed rule language in subsection (a)(4) to reference the comprehensive encounter as "Encounter Type A" and the follow-up encounter as "Encounter Type B."

Legal Authority

The amendment is adopted under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the commissioner's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32.

§355.746. Reimbursement Methodology for Mental Retardation Service Coordination.

(a) Definitions. The following words and terms, when used in this section have the following meanings, unless the context clearly indicates otherwise.

(1) Allowable costs--Those expenses that are reasonable and necessary costs in the normal conduct of operations relating to case management services as defined in §355.102(f)(1) and (2) of this title (relating to General Principles of Allowable and Unallowable Costs).

(2) Provider--An entity delivering service coordination to Medicaid-enrolled individuals according to program rules established by Department of Aging and Disability Services (DADS).

(3) Collateral--An actively involved person as defined in 40 TAC §2.553(1) (relating to Definitions).

(4) Unit of Service--Two statewide encounter rates are established for Mental Retardation Service Coordination services. The encounter unit of service is established as follows:

(A) Comprehensive encounter (Encounter Type A) is a face-to-face contact with the client based on an average time of 45 minutes per contact. The comprehensive encounter is limited to one billable encounter per client per calendar month.

(B) Follow-up encounter (Encounter Type B) is a face-to-face, telephone, or telemedicine contact that involves interface with the client or collateral and is based on an average time of 15 minutes per contact. The follow-up encounter is limited to three follow-up encounters per provider per calendar month for each comprehensive encounter that has occurred within the calendar month. The follow-up encounter does not have to be provided to the client for whom the comprehensive encounter was provided.

(b) Rate methodology.

(1) Initial rates effective September 1, 2011. The initial rates will be determined by summing the total agency expenditures for each type of service coordination service for the most recent cost-settled fiscal year, and dividing that sum by the estimated total number of units of service by type of service for the fiscal year. The total cost to provide service coordination services includes both the interim rates paid and any adjustments made to the interim rates such as additional payments or recoupments.

(2) Cost-report based rates. After the Health and Human Services Commission (HHSC) determines that cost data collected as described in subsection (c) of this section is reliable and sufficient to support development of a cost-report based rate, HHSC will develop statewide reimbursement rates using that data to replace the initial rates as follows:

(A) Project each provider's total allowable costs per type of service from the historical cost reporting period to the prospective reimbursement period using inflation factors according to §355.108 of this title (relating to Determination of Inflation Indices) to arrive at the projected cost per type of service.

(B) For each provider, divide the projected cost per type of service, determined in subparagraph (A) of this paragraph, by the provider's total units of service per type of service delivered during the historical cost reporting period, to arrive at the provider's projected cost per unit of service for each type of service; and

(C) For each type of service:

(i) Arrange all providers' projected cost per unit of service in an array from low to high, with the corresponding total number of units of service for each provider;

(ii) Sum the total number of units of service for each provider in the array progressively, from the lowest projected cost per unit to the highest, to create a running total;

(iii) Divide the total number of units of service by two;

(iv) Identify the value, from the running total sums calculated in clause (ii) of this subparagraph, that is closest to the result in clause (iii) of this subparagraph; and

(v) Identify the cost per unit of service that corresponds to the value identified in clause (iv) of this subparagraph, to arrive at the recommended rate for that service.

(c) Reporting of costs. Service Coordination providers must submit cost report data according to HHSC's specifications.

(1) Exceptions. All Service Coordination providers must submit a cost report unless:

(A) the number of days between the date the first client received services and the fiscal year end is 30 days or fewer; or

(B) if circumstances beyond the control of the provider make cost report completion impossible, such as the loss of records due to natural disasters or removal of records from the provider's custody by any governmental entity. To be excused from submitting a cost report under this subparagraph, the HHSC Rate Analysis Department must receive the request before the due date of the cost report.

(2) Additional requirements. In addition to following the requirements of this section, the provider must follow the cost reporting guidelines described in: §355.101 of this title (relating to Introduction); §355.102 of this title (relating to General Principles of Allowable and Unallowable Costs); §355.103 of this title (relating to Specifications for Allowable and Unallowable Costs); §355.104 of this title (relating to Revenues); §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures); §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports); §355.107 of this title (relating to Notification of Exclusions and Adjustments); §355.108 of this title (relating to Determination of Inflation Indices); §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs); §355.110 of this title (relating to Informal Reviews and Formal Appeals); and §355.11 of this title (relating to Administrative Contract Violation).

(3) Allowable costs. Providers are responsible for reporting only allowable costs on the cost report, except where cost report instructions indicate that other costs are to be reported in specific lines or sections. Only allowable cost information is used to determine recommended rates.

(4) Unallowable costs. To ensure that the database reflects costs and other information that are necessary for the provision of services and is consistent with federal and state regulations, HHSC excludes from rate determination any unallowable expenses included in the cost report and makes the appropriate adjustments to expenses and other information reported by providers. Individual provider cost reports may not be included in the database used for reimbursement determination if:

(A) there is reasonable doubt as to the accuracy or allowability of a significant part of the information reported; or

(B) an auditor determines that reported costs are not verifiable.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 11, 2011.

TRD-201102617

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Effective date: September 1, 2011

Proposal publication date: April 15, 2011

For further information, please call: (512) 424-6900



1 TAC §355.781

The Texas Health and Human Services Commission (HHSC) adopts the amendment to §355.781, concerning Rehabilitative Services Reimbursement Methodology, without changes to the proposed text as published in the April 22, 2011, issue of the *Texas Register* (36 TexReg 2583) and will not be republished.

Background and Justification

Providers in the mental health rehabilitative services program are currently paid a statewide interim rate that is settled to each provider's costs within certain parameters. HHSC is adopting the amendment to eliminate the current cost settlement process and implement a prospective uniform statewide reimbursement rate methodology.

The Centers for Medicare and Medicaid Services (CMS) informed HHSC that the current cost settlement process for this program was not acceptable and that the cost settlement process would need to be either changed or eliminated. This rule eliminates the cost settlement methodology and replaces it with a prospective, uniform, statewide reimbursement rate that CMS has indicated is acceptable.

This rule is also adopted to update and clarify current requirements for the Rehabilitative Services program and to delete outdated information.

Comments

The 30-day comment period ended May 22, 2011. During this period, HHSC did not receive any comments regarding the proposed amendments to the rule.

Legal Authority

The amendment is adopted under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 11, 2011.

TRD-201102618

Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Effective date: September 1, 2011
Proposal publication date: April 22, 2011
For further information, please call: (512) 424-6900

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SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 23. EARLY AND PERIODIC SCREENING, DIAGNOSIS, AND TREATMENT (EPSDT)

The Texas Health and Human Services Commission (HHSC) adopts the repeal of §355.8443 and new §355.8443, concerning the reimbursement methodology for school health and related services (SHARS), without changes to the proposed text as published in the April 29, 2011, issue of the *Texas Register* (36 TexReg 2647) and will not be republished.

Background and Justification

SHARS is a joint program of HHSC and the Texas Education Agency that allows school districts to obtain federal Medicaid reimbursement for the provision of health-related services to students with disabilities. The new rule provides clarity and consistency with the current reimbursement methodology related to the cost report, reconciliation, and settlement process for SHARS.

Comments

The 30-day comment period ended May 29, 2011. During this period, HHSC did not receive any comments regarding the proposed repeal or new section.

1 TAC §355.8443

Legal Authority

The repeal is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 6, 2011.

TRD-201102531
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Effective date: October 1, 2011
Proposal publication date: April 29, 2011
For further information, please call: (512) 424-6900

1 TAC §355.8443

Legal Authority

The new rule is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-201102532
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Effective date: October 1, 2011
Proposal publication date: April 29, 2011
For further information, please call: (512) 424-6900

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

**CHAPTER 29. ECONOMIC DEVELOPMENT
SUBCHAPTER B. GO TEXAN RURAL
COMMUNITY PROGRAM RULES**

4 TAC §§29.20, 29.25, 29.28, 29.29, 29.31, 29.32

The Texas Department of Agriculture (the department) adopts amendments to Chapter 29, Subchapter B, §§29.20, 29.25, 29.28, 29.29, 29.31, and 29.32, concerning the department's GO TEXAN rural community program (program), without changes to the proposal published in the June 10, 2011, issue of the *Texas Register* (36 TexReg 3565). The amendments are adopted in order for the department to continue providing services under this program to eligible rural communities, and to comply with changes made to the program by the 82nd Legislature. The Legislature has required that all of the costs of administering this program be entirely offset by revenue generated for the program and has authorized the agency to collect fees accordingly. The amendments to §29.20 and §29.25 are adopted for purposes of clarification. The amendment to §29.28 adds a registration fee for participation in the GO TEXAN Rural Community program. The amendment also changes the renewal period from three years, to two years. Clarification and guidance are also provided for the renewal process in this amendment. The amendment to §29.29 clarifies the role of the department and the approved use of the GO TEXAN Mark by Licensees. The amendment to §29.31 clarifies member benefits available with paid membership in the Program. The amendment to §29.32 is adopted to adjust the expiration date of the membership in the Program.

No comments were received on the proposal.

The amendments to Chapter 29, Subchapter B are adopted under the Texas Agriculture Code (the Code), §12.016, which authorizes the department to adopt rules to administer its duties under the Code; and §12.027, as amended by Senate Bill 1086, 82nd Regular Session, 2011, which authorizes the department to establish and maintain an economic development program and to set a fee for program participation.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 11, 2011.

TRD-201102626

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Effective date: July 31, 2011

Proposal publication date: June 10, 2011

For further information, please call: (512) 463-4075



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER AA. ACCOUNTABILITY AND PERFORMANCE MONITORING

19 TAC §97.1001

The Texas Education Agency (TEA) adopts an amendment to §97.1001, concerning accountability. The amendment is adopted without changes to the proposed text as published in the May 27, 2011, issue of the *Texas Register* (36 TexReg 3241) and will not be republished. The section describes the state accountability rating system and annually adopts the most current accountability manual. The amendment adopts applicable excerpts of the *2011 Accountability Manual*. Earlier versions of the manual will remain in effect with respect to the school years for which they were developed.

Legal counsel with the TEA has recommended that the procedures for issuing accountability ratings for public school districts and campuses be adopted as part of the *Texas Administrative Code*. This decision was made in 2000 given a court decision challenging state agency decision making via administrative letter/publications. Given the statewide application of the accountability rating process and the existence of sufficient statutory authority for the commissioner of education to formally adopt rules in this area, portions of each annual accountability manual have been adopted since 2000. The accountability system evolves from year to year so the criteria and standards for rating and acknowledging schools in the most current year differ to some degree over those applied in the prior year. The intention is to annually update 19 TAC §97.1001 to refer to the most recently published accountability manual.

The amendment to 19 TAC §97.1001 adopts excerpts of the *2011 Accountability Manual* into rule as a figure. The excerpts,

Chapters 2-6, 8, 10-13, and 15-16 of the 2011 Accountability Manual, specify the indicators, standards, and procedures used by the commissioner of education to determine accountability ratings, both standard and alternative education accountability (AEA) procedures, for districts, campuses, and charter schools. These chapters also specify indicators, standards, and procedures used to determine Gold Performance Acknowledgment (GPA) on additional indicators for Texas public school districts and campuses. The TEA will issue accountability ratings under the procedures specified in the *2011 Accountability Manual* by August 1, 2011. Ratings may be revised as a result of investigative activities by the commissioner as authorized under TEC, §39.074 and §39.075, as those sections existed before amendment by House Bill (HB) 3, 81st Texas Legislature, 2009.

In 2011, campuses and districts will be evaluated using five base indicators: Texas Assessment of Knowledge and Skills (TAKS) results, commended performance, the English Language Learners (ELL) progress indicator, completion rates, and annual dropout rates. In 2011, the GPA system will award acknowledgment on up to 15 separate indicators to districts and campuses rated *Academically Acceptable*, *AEA Academically Acceptable*, or higher: Attendance Rate for Grades 1-12; Advanced Course/Dual Enrollment Completion; Advanced Placement/International Baccalaureate Results; College Admissions Test Results; Commended Performance on Reading/English Language Arts (ELA), Mathematics, Writing, Science and/or Social Studies; Recommended High School Program/Distinguished Achievement Program Participation; Comparable Improvement on Reading/ELA and Mathematics; Texas Success Initiative - Higher Education Readiness Component on ELA and/or Mathematics; and College-Ready Graduates.

The adopted amendment also modifies subsection (e) to specify that accountability manuals adopted for school years prior to 2011-2012 will remain in effect with respect to those school years.

The adopted rule action places the specific procedures contained in *Chapters 2-6, 8, 10-13, and 15-16 of the 2011 Accountability Manual* for annually rating school districts and campuses in the *Texas Administrative Code*. Applicable procedures will be adopted each year as annual versions of the accountability manual are published. The adopted amendment has no locally maintained paperwork requirements.

The TEA determined that there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal began May 27, 2011, and ended June 27, 2011. Following is a summary of public comments received and corresponding agency responses regarding the proposed amendment to 19 TAC Chapter 97, Planning and Accountability, Subchapter AA, Accountability and Performance Monitoring, §97.1001, Accountability Rating System.

Comment: Cypress-Fairbanks Independent School District (ISD) commented that the minimum performance floor to use the Exceptions Provision to "gate up" to *Academically Acceptable* should be re-set from five percentage points below the standard to ten percentage points below the standard.

Agency Response: The agency disagrees and maintains language as published as proposed for 2011. In 2008, the Exceptions Provision was modified in many ways, including a modification of the minimum performance floor values required for

mathematics and science from five percentage points to ten percentage points. This proved to be a one-year change because in 2009 the minimum performance floor returned to five points below the standard for all subjects. Though the removal of the Texas Projection Measure (TPM) feature from the system will likely prevent many districts and campuses from achieving a higher rating, relaxing the performance floor for the Exceptions Provision is not appropriate. The districts and campuses that would benefit from the expanded performance floor are, by definition, more than five percentage points below the accountability standard. Also, these campuses and districts did not show sufficient improvement from the prior year to meet Required Improvement; most, in fact exhibited declines in performance. Lower floors for mathematics and science exceptions increase gaps in accountability standards. Decreasing the exceptions floor by an additional five percentage points will allow districts and campuses with a passing rate of 50% in science or 55% in mathematics to achieve the *Academically Acceptable* rating. The minimum performance for reading, writing, and social studies is 65%--a difference of fifteen percentage points when compared to the 50% floor requested for science.

Comment: An individual commented that the rating labels be expanded to award an "Exemplary Commended" rating to campuses and districts that achieve the exemplary standard on TAKS and the commended performance indicators, while campuses and districts that achieve the exemplary standard on TAKS but do not achieve the commended performance exemplary standard be awarded the "Exemplary" rating.

Agency Response: The agency disagrees and maintains language as published as proposed for 2011. The rating labels are specified in statute and further disaggregations of existing rating categories are not permitted. Locally, districts can make these distinctions.

Comment: A school principal from Brock ISD commented that the Exceptions Provision and Required Improvement features should be available for the Commended Performance indicators that will be evaluated for the first time for the 2011 state accountability ratings.

Agency Response: The agency disagrees and maintains language as published as proposed for 2011. In anticipation of the more rigorous HB 3 requirements, the agency maintains that districts and campuses should demonstrate performance at a higher level than Met Standard in order to achieve the *Recognized* or *Exemplary* ratings. Since student performance on the end-of-course and the new Grades 3-8 State of Texas Assessments of Academic Readiness (STAAR) tests are unknown at this time, the best proxy available on the current assessment is the commended performance standard. Therefore, the agency maintains that districts and campuses must meet the absolute standards on the Commended Performance indicator of 15% for *Recognized* and 25% for *Exemplary* to encourage campuses and districts to focus on the performance of higher performing students, in addition to those not passing the test.

Comment: The Texas Charter Schools Association (TCSA) commented that the Texas Growth Index (TGI) or a similar longitudinal growth measure be incorporated in the TAKS Progress Indicator for both Grades 10 and 11 for charter districts and alternative education campuses that are evaluated under the 2011 AEA procedures. The TCSA stated that the use of the TGI would allow schools evaluated under the AEA procedures to demonstrate their student's continued progress toward meeting minimum standards.

Agency Response: The agency disagrees and maintains language as published as proposed for 2011. In the April 22, 2011, release of the final decisions for 2011 accountability, the commissioner of education determined that the use of the TPM will be discontinued for 2011 state and federal accountability. This decision removed the TPM results for TAKS and TAKS-M and the TAKS-Alt growth measure from the TAKS indicators evaluated for standard procedures and from the TAKS Progress Indicator used for the AEA procedures. The decision also included the discontinuation of the use of the TGI for Grade 11 in the TAKS Progress Indicator. The agency maintains that the uniform removal of these student growth measures from the 2011 accountability ratings provides a level playing field for all districts and campuses regardless of campus type or grade levels served.

The amendment is adopted under the Texas Education Code, §§39.051(c)-(d), 39.072(c), 39.0721, 39.073, and 29.081(e), as those sections existed before amendment by House Bill 3, 81st Texas Legislature, 2009, which authorize the commissioner of education to specify the indicators, standards, and procedures used to determine standard accountability ratings and alternative education accountability ratings and to determine acknowledgment on additional indicators. These statutes remain in effect through the 2011-2012 school year.

The amendment implements the Texas Education Code, §§39.051(c)-(d), 39.072(c), 39.0721, 39.073, and 29.081(e), as those sections existed before amendment by House Bill 3, 81st Texas Legislature, 2009.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 8, 2011.

TRD-201102587

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Effective date: July 28, 2011

Proposal publication date: May 27, 2011

For further information, please call: (512) 475-1497



19 TAC §97.1005

The Texas Education Agency (TEA) adopts an amendment to §97.1005, concerning accountability and performance monitoring. The amendment is adopted without changes to the proposed text as published in the May 27, 2011, issue of the *Texas Register* (36 TexReg 3243) and will not be republished. The section describes the purpose of the Performance-Based Monitoring Analysis System (PBMAS) and manner in which school districts and charter school performance is reported. The section also adopts the most recently published PBMAS Manual. The amendment adopts applicable excerpts of the Performance-Based Monitoring Analysis System 2011 Manual. Earlier versions of the manual will remain in effect with respect to the school years for which they were developed.

House Bill 3459, 78th Texas Legislature, 2003, added the Texas Education Code (TEC), §7.027, limiting and redirecting monitoring done by the TEA to that required to ensure school district and charter school compliance with federal law and regulations; financial accountability, including compliance with grant require-

ments; and data integrity for purposes of the Public Education Information Management System (PEIMS) and accountability under TEC, Chapter 39. Legislation passed in 2005 renumbered TEC, §7.027, to TEC, §7.028. To meet this monitoring requirement, the agency developed the PBMAS, which is used in conjunction with other evaluation systems, to monitor performance and program effectiveness of special programs in school districts and charter schools.

Agency legal counsel has determined that the commissioner of education should take formal rulemaking action to place into the *Texas Administrative Code* procedures related to the PBMAS. Given the statewide application of the PBMAS and the existence of sufficient statutory authority for the commissioner of education to formally adopt rules in this area, portions of each annual PBMAS Manual have been adopted since the first PBMAS Manual was developed in 2004-2005. The PBMAS evolves from year to year, and the intent is to annually update 19 TAC §97.1005 to refer to the most recently published PBMAS Manual.

The adopted amendment to 19 TAC §97.1005 updates the current rule by adopting excerpted sections of the PBMAS 2011 Manual. These excerpted sections describe the specific criteria and calculations that will be used to assign 2011 PBMAS performance levels.

The 2011 PBMAS includes several key changes from the 2010 system. The phase-in of TAKS-Modified and TAKS-Alternate performance results is reflected in the 2011 PBMAS TAKS passing rate indicators as appropriate. Cut-point adjustments have been made for the first time to all annual dropout rate indicators. Required Improvement has been added to all graduation rate indicators. New standards and cut-points were adopted for several PBMAS indicators, including the 3-5 Year Olds Less Restrictive Environments (LRE) Placement Rate, the 6-11 Year Olds LRE Placement Rate, the 12-21 Year Olds LRE Placement Rate, the Special Education Discretionary Discipline Alternative Education Program (DAEP) Placements, the Special Education Discretionary Placements to In-School Suspension (ISS), and the Special Education Discretionary Placements to Out-of-School Suspension (OSS). The No Child Left Behind, Title I, Part A Recommended High School Program (RHSP)/Distinguished Achievement Program (DAP) Diploma Rate indicator moved from a "Report Only" indicator to an indicator with performance level assignments.

The "hold harmless" provision that was added in the 2010 PBMAS to two subject-area indicators in both the Career and Technical Education and the Special Education program areas was removed. The Special Education African American Representation and Hispanic Representation indicators were modified based on consideration of the new federal race/ethnicity categories in relation to the intent of those indicators. Changes to the PBMAS indicators for 2011 are marked in the manual as "New!" for easy reference.

The adopted amendment also modifies subsection (d) to specify that the PBMAS Manual adopted for the school years prior to 2011-2012 will remain in effect with respect to those school years.

The adopted amendment establishes in rule the PBMAS procedures for assigning the 2011 PBMAS performance levels. Applicable procedures will be adopted each year as annual versions of the PBMAS Manual are published. The adopted amendment has no locally maintained paperwork requirements.

The TEA determined that there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal began May 27, 2011, and ended June 27, 2011. Following is a summary of public comments received and corresponding agency responses regarding the proposed amendment to 19 TAC Chapter 97, Planning and Accountability, Subchapter AA, Accountability and Performance Monitoring, §97.1005, Performance-Based Monitoring Analysis System.

Comment: The Texas Charter Schools Association (TCSA) commented on the Special Education Representation indicator and stated that students may enter charters already identified as requiring special education services. The TCSA stated that as such, the charter is obligated to serve those students as required under federal special education law and guidelines, with the result often being that a charter may be assigned a Performance Level above 0 for a circumstance for which it has little to no control. The TCSA suggested the Special Education Representation indicator be adjusted to measure identification of students with special needs and to apply filters (similar to those that currently exist for residential facilities) to charters that have historically served students with special needs effectively and at higher rates due to their missions and have therefore attracted a higher number of students requiring special education and other special services.

Agency Response: The agency agrees that charters, like all districts in Texas, are required to serve students in accordance with federal special education law and that charters, like all districts, have students enrolled who have already been identified as eligible for special education services. The agency disagrees with the suggestion to adjust the Special Education Representation indicator by measuring identification of students with special needs and applying charter-specific filters to the indicator and maintains language as published as proposed. The PBMAS was developed to take into consideration the diversity that exists across districts, not only in terms of charter schools, but also between small and large districts, rural and urban districts, economically disadvantaged and non-economically disadvantaged districts, and districts with significant numbers of at-risk students and districts with small numbers of at-risk students. The diversity of the state's districts and charters is appropriately accommodated in the PBMAS through a variety of unique components, including performance level cut-points, special analysis, minimum size requirements, and required improvement, all of which effectively allow the PBMAS to evaluate a very diverse set of districts while at the same time generously accounting for any unique circumstances that may exist for any given indicator or district. Furthermore, a primary purpose of the PBMAS is to meet federal monitoring expectations and federal program requirements, which the Special Education Representation indicator, as implemented in the PBMAS since 2004, appropriately accomplishes.

Comment: The TCSA commented on the Graduation Rate indicators and stated that many charter campuses serve a very high number of students in at-risk situations. The TCSA suggested that filters be applied to the Graduation Rate indicators for charters whose campuses serve a majority of at-risk students who enter charters already behind their graduating cohort.

Agency Response: The agency agrees that charters, like many districts in Texas, have campuses that serve a very high number of students in at-risk situations. The agency disagrees with the

suggestion to adjust the Graduation Rate indicators by applying charter-specific filters to the indicator and maintains language as published as proposed. The PBMAS was developed to take into consideration the diversity that exists across districts, not only in terms of charter schools, but also between small and large districts, rural and urban districts, economically disadvantaged and non-economically disadvantaged districts, and districts with significant numbers of at-risk students and districts with small numbers of at-risk students. The diversity of the state's districts and charters is appropriately accommodated in the PBMAS through a variety of unique components, including performance level cut-points, special analysis, minimum size requirements, and required improvement, all of which effectively allow the PBMAS to evaluate a very diverse set of districts while at the same time generously accounting for any unique circumstances that may exist for any given indicator or district. Furthermore, a primary purpose of the PBMAS is to meet federal monitoring expectations and federal program requirements, which the Graduation Rate indicators, as implemented in the PBMAS since 2007, appropriately accomplish.

Comment: The TCSA stated that with each intervention stage additional activities are required of districts and charters, ranging from simple explanations of the data to highly detailed continuous improvement plans, public hearings, and on-site reviews. The TCSA suggested that charters who serve a higher percentage of at-risk students or special populations be able, for intervention purposes, to engage in minimal intervention activities for the Special Education Representation and Graduation Rate indicators. The TCSA noted, for example, that a charter school in the alternative education accountability system should be able to state that a great number of its students entered the charter already behind in grade level and are unlikely to graduate with their cohorts. The TCSA stated that this intervention activity could be submitted without the charter advancing in intervention stages and without the charter having to complete a detailed analysis, a continuous improvement plan, hold a public hearing, or prepare for an on-site review.

Agency Response: The agency cannot address the comment because it is outside of the scope of the current rule proposal.

The amendment is adopted under the Texas Education Code (TEC), §7.028, which authorizes the agency to monitor as necessary to ensure school district and charter school compliance with state and federal law and regulations; TEC, §29.001(5), which authorizes the agency to effectively monitor all local educational agencies (LEAs) to ensure that rules relating to the delivery of services to children with disabilities are applied in a consistent and uniform manner, to ensure that LEAs are complying with those rules, and to ensure that specific reports filed by LEAs are accurate and complete; TEC, §29.010(a), which authorizes the agency to adopt and implement a comprehensive system for monitoring LEA compliance with federal and state laws relating to special education, including ongoing analysis of LEA special education data; TEC, §39.051 and §39.052, which authorize the commissioner to determine criteria for accreditation statuses and to determine the accreditation status of each school district and open-enrollment charter school; TEC, §39.054, which authorizes the commissioner to adopt rules to evaluate school district and campus performance, including evaluation against state standards and consideration of the performance of each campus in a school district and each open-enrollment charter school on the basis of the campus's or school's performance on student achievement indicators; TEC, §§39.056-39.058, which authorize the commissioner to adopt procedures relating to on-site and

special accreditation investigations; and TEC, §§39.102-39.104, which authorize the commissioner to implement procedures to impose interventions and sanctions for districts, campuses, and open-enrollment charter schools.

The amendment implements the TEC, §§7.028, 29.001(5), 29.010(a), 39.051, 39.052, 39.054, 39.056-39.058, and 39.102-39.104.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 8, 2011.

TRD-201102586

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Effective date: July 28, 2011

Proposal publication date: May 27, 2011

For further information, please call: (512) 475-1497



TITLE 22. EXAMINING BOARDS

PART 11. TEXAS BOARD OF NURSING

CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

22 TAC §217.5

Introduction. The Texas Board of Nursing (Board) adopts amendments to §217.5 (relating to Temporary License and Endorsement) without changes to the proposed text as published in the June 3, 2011, issue of the *Texas Register* (36 TexReg 3389) and will not be republished.

Reasoned Justification. The adopted amendments are authorized under the Occupations Code §§301.251, 301.252, 301.256, 301.258, 301.259, 301.260, 301.303, and 301.151 and are necessary to: (i) clarify the requirements for licensure by endorsement; (ii) re-organize the section for better clarity and readability; and (iii) maintain consistency with the requirements of §217.9 (relating to Inactive Status).

§217.9

Board Rule 217.9 currently sets forth the requirements for reactivating an inactive Texas license. This rule was amended by the Board in October, 2010, to include new requirements for the reactivation of an inactive license under certain conditions. Specifically, the rule required individuals who have not practiced nursing (in Texas or any other jurisdiction) for four or more years to meet additional requirements before being permitted to reactivate an inactive Texas nursing license. The amendments were published in the October 8, 2010, issue of the *Texas Register* (35 TexReg 9093).

Board Rule 217.5 currently sets forth the requirements for Texas licensure based upon endorsement from another state. Since at least 1998, this rule has required certain individuals to also comply with the Board's requirements for the reactivation of an inactive Texas license in certain circumstances. Specifically, this rule has required individuals who have not practiced nursing within the four years preceding their licensure request to meet

the Board's requirements for the reactivation of an inactive Texas license under the same circumstances. These requirements included the completion of a refresher course, extensive orientation to the practice of nursing, or nursing program of study (refresher course). When the Board amended Rule 217.9 in October, 2010, to include additional requirements for the reactivation of an inactive Texas license, §217.5 was amended to incorporate these new requirements without a separate rule proposal, as the language of §217.5 incorporates the requirements of §217.9 by reference. As such, every time the Board has amended §217.9, §217.5 has been implicated by reference and has not required a separate rule proposal. Board Rule 217.5 has been structured in this manner for approximately 13 years. Nevertheless, some members of the public have commented that this rule structure makes compliance with §217.5 confusing and difficult. As a result, the Board has determined that it is necessary to clarify the requirements of existing §217.5, as it incorporates the amendments adopted in 2010, and to eliminate reference to §217.9 from the section altogether.

Historical Perspective

At its October, 2008, meeting, the Board considered a license reinstatement request from an individual who had been away from patient care for approximately 18 years. The individual sought: (i) a temporary permit in order to complete a competency evaluation; (ii) a limited license; or (iii) permission to retake the National Counsel Licensure Examination (NCLEX). The Board denied the individual's requests due to the extensive amount of time that the nurse had been away from patient care. At that time, the Board also charged Board staff with reviewing its authority under the Occupations Code §301.301 and developing a rule that addressed situations beyond which an expired (delinquent) license could not be renewed. Board Staff presented its findings and recommendations to the Board at its January, 2009, meeting. Board Staff also presented the results of a survey from 23 other state boards of nursing, including Alabama, Arkansas, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Indiana, Kansas, Michigan, Missouri, Nebraska, Nevada, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Vermont, Washington, DC, and West Virginia, regarding their treatment of the renewal of an expired license. Although there was no uniform standard among the surveyed states, 16 of the 23 states surveyed required the completion of a re-entry program or a comprehensive refresher course after a nursing license had been expired for a certain period of time. The majority of these states required a nursing license to have been expired for at least a five-year period. These states included Arkansas, Connecticut, Delaware, Georgia, Hawaii, Kansas, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Vermont, Washington, DC, and West Virginia. Further, 5 of the 23 states required a nurse to complete formal nursing re-education or to retake the NCLEX after a nursing license had been expired for a certain period of time. The majority of these states also required a nursing license to have been expired for at least a five-year period. These states included Connecticut, Georgia, Hawaii, Michigan, and Oklahoma. After its consideration of this information, the Board determined that additional information was still needed and charged the Advisory Committee on Education and the Nursing Practice Advisory Committee (Committees) with the development of a rule related to failing to renew a license after a significant passage of time.

The Committees first convened via teleconference on June 4, 2009, to consider the Board's charge. The Committees discussed their concerns related to a nurse's return to active

nursing practice after being away for an extended period of time. The Committees also considered the results from the Board's survey of other state boards of nursing regarding their treatment of the renewal of an expired license. The Committees discussed the Board's existing requirements related to refresher courses and whether those requirements sufficiently ensured a nurse's competency to re-enter active nursing practice. Several committee members suggested strengthening the Board's refresher course requirements in order to better ensure public safety when nurses seek to re-enter active nursing practice. Some committee members suggested requiring nurses to demonstrate their knowledge in combination with an exam to establish their competency to practice upon re-entry. The Committees also discussed adding a Jurisprudence Exam to the Board's refresher course requirements. Some committee members advocated specialized refresher courses for individuals desiring to work in practice specific areas, such as pediatrics, case management, school nursing, or public health, while other committee members stressed the importance of more generalized refresher courses. The Committees also discussed whether formal nursing re-education should be required if a nurse had been away from active practice for a very lengthy period of time, such as ten or fifteen years. Following its discussions, however, the Committees were unable to reach a final recommendation regarding a nurse's failure to renew a license after a significant passage of time and determined that they needed to discuss the issue further.

The Committees re-convened on May 17, 2010, to again consider the Board's charge. Because there was general agreement at the June, 2009, meeting that the Board's refresher course requirements should be strengthened to better ensure a nurse's competency to re-enter active nursing practice after an extended period of time, the Committees focused their discussions on the Board's existing requirements for refresher courses. Specifically, the Committees discussed requiring all nurses seeking to re-enter active nursing practice, whether by reactivating an expired (delinquent) license or by reactivating an inactive license, to complete the Board's online Nursing Jurisprudence Prep Course, the Board's Jurisprudence and Ethics Workshop, or a Board approved Nursing Jurisprudence and Ethics Course, as well as the Board's Nursing Jurisprudence Exam. The Committees felt that these additional requirements were necessary to test a nurse's competency to re-enter active nursing practice. The Committees also discussed recommendations related to the required course content of refresher courses, such as the amount of time that a nurse should spend reviewing and mastering each refresher course topic, as well as the kinds of issues that should be addressed during each phase of a refresher course. Committee members felt that additional Board guidance in this area would be helpful to nurses completing refresher courses, as well as to preceptors teaching refresher courses. Following its discussions, the Committees voted to recommend amending Board Rules §217.6, relating to the reactivation of expired (delinquent) licenses, and §217.9, relating to the reactivation of inactive licenses. The Board considered the Committees' recommendations at its July, 2010, meeting and voted to approve the proposed amendments. The amendments were adopted by the Board and became effective in October, 2010.

Pursuant to the 2010 amendments, a nurse who has been away from active nursing practice for four or more years must meet the requirements adopted by the Board in 2010 (i.e., completion of a refresher course and nursing jurisprudence and ethics work-

shop or prep course) before being permitted to reactivate an expired (delinquent) or inactive license. These same requirements also apply to an individual seeking Texas licensure through endorsement from another state. Thus, a nurse who has not practiced nursing in another state within the last four years must meet the additional requirements adopted by the Board in 2010 (i.e., completion of a refresher course and nursing jurisprudence and ethics workshop or prep course) before being issued a license to practice in Texas. These requirements were established by the Board in October, 2010, and have applied to endorsement candidates since that time. Although the adopted amendments to §217.5 do not change this fact, they do clarify the requirements applicable to endorsement applicants under §217.5.

§217.5

In order to clarify the requirements that apply to an individual seeking licensure in Texas through endorsement from another state, the adopted amendments to §217.5 are divided into two sets of circumstances. Adopted §217.5(a) addresses situations where an endorsement applicant has practiced nursing in another state within the last four years. Adopted §217.5(b) addresses situations where an endorsement candidate has not practiced nursing in another state within the last four years. Each subsection then clearly prescribes the specific requirements that apply to the individual in either situation. These amendments do not substantively alter the existing requirements that apply in either situation, nor do they impose new or additional requirements in either situation. Further, the adopted amendments eliminate all reference to the requirements of §217.9, from which the existing requirements of §217.5(b) derive, and instead, clearly state the applicable requirements directly in §217.5. These changes should eliminate any confusion that may have been caused by the prior reference to §217.9 in the rule.

Requirements for Endorsement

Adopted §217.5(a) prescribes the requirements that apply to an individual who has practiced nursing in another state within the four years immediately preceding his or her request for licensure by endorsement. In those situations, the adopted amendments require the individual to: (i) have graduated from an approved nursing education program; (ii) have passed a licensure examination; (iii) be licensed by another United States jurisdiction; (iv) for graduates of nursing education programs outside of the United States, submit verification of licensure from the country of education or as evidenced by one of the prescribed credentialing services; (v) file a completed application with the Board; (vi) pay the required non-refundable application fee; (vii) submit fingerprints for a criminal background check; and (viii) pass the Board's approved jurisprudence exam. With the sole exception of eliminating an outdated requirement that an individual submit a passport sized identification photograph with his or her endorsement application, the adopted amendments to §217.5(a) do not alter any of the existing requirements for endorsement applicants who have practiced nursing within the last four years in another state. Rather, the adopted amendments to §217.5(a) better clarify the applicability of the subsection and better organize the requirements of the subsection.

Adopted §217.5(b) prescribes the requirements that apply to an individual who has not practiced nursing in another state within the four years immediately preceding his or her request for licensure by endorsement. In those situations, the adopted amendments require the individual to complete a refresher course and one of three prescribed nursing jurisprudence and

ethics courses or workshops. The adopted amendments make clear that the individual must complete the refresher course and the jurisprudence and ethics course or workshop before submitting any other items to the Board. This requirement is important, as it is designed to reduce delay in the application process caused by incomplete or incorrect application submissions. Further, the adopted amendments also require an individual to obtain a six-month temporary permit for the specific purpose of completing a refresher course. This six-month temporary permit allows the individual to complete the clinical component of a required refresher course prior to licensure. The application for the six-month temporary permit and the instruction packet for refresher courses are adopted by reference in §217.5(c). These application and instruction packets are the same packets that were previously adopted by reference in §217.9.

Upon the successful completion of a refresher course and one of the three prescribed jurisprudence and ethics courses or workshops, an individual must submit the same information to the Board as is required of an endorsement applicant under §217.5(a). Those items include evidence of: (i) graduation from an approved nursing education program; (ii) passing a licensure examination meeting the Board's established minimum passing scores; (iii) licensure by another United States jurisdiction; (iv) for graduates of nursing education programs outside of the United States, verification of licensure from the country of education or as evidenced by one of the prescribed credentialing services; (v) filing a completed application with the Board; (vi) paying the required non-refundable application fee; (vii) submitting fingerprints for a criminal background check; and (viii) passing the Board's approved jurisprudence exam. The adopted amendments to §217.5(b) do not substantially change any of the requirements that currently apply to endorsement applicants who have not practiced nursing in another state within the last four years. These requirements were specified in the 2010 amendments to §217.9 and have applied (by reference) to endorsement applicants under §217.5(b) since that time. However, the adopted amendments do clarify the requirements for endorsement candidates under §217.5(b) by eliminating all references to §217.9 from the subsection and clearly re-stating those requirements in the subsection itself.

Refresher Courses and Jurisprudence and Ethics Courses/Workshops

The ever evolving landscape of medical care requires nurses to stay abreast of the most current changes in medical techniques, treatments, and technology. As such, a nurse's competency to safely re-enter nursing practice may be questioned if he or she has been away from practice for an extended period of time. As a result, the Board has historically required nurses who have been away from nursing practice for four or more years to complete refresher courses before reactivating an expired (delinquent) or inactive Texas license or being issued a Texas license through endorsement from another state. Neither the 2010 amendments to §217.9 nor the adopted amendments to §217.5(b) change the Board's practice in this regard. However, the adopted amendments do provide additional guidance to individuals who are required to complete refresher courses and to the preceptors who teach such courses. Although the Board has always established general parameters for refresher courses, individual courses have historically varied from one another based upon a nurse's individual deficiencies, a preceptor's preferences, and the availability of clinical experiences. In an effort to ensure that a refresher course provides at least a minimally comprehensive review of nursing practice, the Board

adopted new requirements for these courses in 2010. The requirements were designed to establish minimum standards for refresher courses without eliminating a preceptor's flexibility to customize certain portions of a course to address a particular nurse's individual deficiencies. Further, the requirements were designed to provide nurses with a more comprehensive review of nursing practice, as well as an opportunity to review and test their clinical skills. These requirements are contained in the six-month temporary permit application and instruction packets that were adopted by reference in §217.9 in 2010, and are now adopted by reference in adopted §217.5(c).

First, these requirements specify the recommended amount of time that a nurse and preceptor should spend on each required refresher course study topic. For example, the Board recommends that 20% of a course be spent on a pharmacology review, while only 15% of a course be spent on the review of the Nursing Practice Act, rules, and position statements. By identifying the amount of time that a nurse and preceptor should spend on each area, the requirements prioritize the importance of each area of nursing practice, thereby creating a more uniform structure for courses. Second, the requirements specify the types of information that should be reviewed as part of each refresher topic. For example, the requirements specify several documents that should be reviewed as part of a scope of practice discussion, including documents and reference materials that are published on the Board's website. This requirement helps ensure that a refresher includes a review of the appropriate reference material applicable to each topic. In this way, the requirements strengthen the quality and value of these courses, which should enhance the competency of nurses completing the courses. Third, the requirements specify that a nurse must provide documentation of his or her current cardiopulmonary resuscitation (CPR) certification prior to beginning any precepted clinical experience. Nurses are required to provide direct patient care as part of a refresher course. As such, this requirement is necessary to ensure the safety of patients during a nurse's precepted clinical experiences.

Further, based upon the Committees' recommendations and the Board's own concerns regarding the safety and competency of nurses re-entering nursing practice after being away for an extended period of time, the 2010 amendments required a nurse to complete one of three prescribed jurisprudence and ethics courses or workshops. Not only do such courses contain information related to the Nursing Practice Act and the Board's rules and regulations, but they also address patient safety and advocacy, scope of practice issues, systems issues, and safe harbor. As a result, these courses are designed to support a nurse's transition back into active nursing practice and provide opportunity to objectively measure a nurse's requisite nursing knowledge.

The remaining adopted amendments to §217.5 are necessary to re-designate the existing subsections of the section and to increase the overall organization and readability of the section.

How the Sections Will Function. Adopted §217.5(a) requires an endorsement applicant who has practiced nursing in another state within the four years immediately preceding his or her request for licensure to meet the following requirements: (i) graduation from an approved nursing education program; (ii) satisfactory completion of a licensure examination that meets the following requirements: (I) Vocational Nurse Licensure Examination: (-a-) prior to April 1982--a score of 350 on the SBTPE; (-b-) beginning October 1982 to September 1988--a score of 350 on the NCLEX-PN; and (-c-) October 1988 and after, a passing report on the NCLEX-PN; (II) Registered Nurse Licensure Examination: (-a-) prior to July 1982--a score of 350 on each of the five parts of the SBTPE; (-b-) prior to February 1989--a minimum score of 1600 on the NCLEX-RN; and (-c-) February 1989 and after, a passing report on the NCLEX-RN; (iii) licensure by another U.S. jurisdiction; (iv) for an applicant who has graduated from a nursing education program outside of the United States or National Council jurisdictions, verification of LVN licensure as required in §217.4(a)(1) or verification of RN licensure from the country of education or as evidenced in a Credential Evaluation Service (CES) Full Education Course-by-Course Report from the Commission on Graduates of Foreign Nursing Schools (CGFNS), Educational Records Evaluation Service (ERES), or

port on the NCLEX-PN; (II) Registered Nurse Licensure Examination: (-a-) prior to July 1982--a score of 350 on each of the five parts of the SBTPE; (-b-) prior to February 1989--a minimum score of 1600 on the NCLEX-RN; and (-c-) February 1989 and after, a passing report on the NCLEX-RN; (iii) licensure by another U.S. jurisdiction; (iv) for an applicant who has graduated from a nursing education program outside of the United States or National Council jurisdictions, verification of LVN licensure as required in §217.4(a)(1) or verification of RN licensure from the country of education or as evidenced in a Credential Evaluation Service (CES) Full Education Course-by-Course Report from the Commission on Graduates of Foreign Nursing Schools (CGFNS), Educational Records Evaluation Service (ERES), or the International Education Research Foundation (IERF), as well as meeting all other requirements in §217.5(a)(2) - (3); (v) filing a completed "Application for Temporary License/Endorsement" containing: (I) personal identification and verification of required information in §217.5(a)(1) - (3); and (II) attestation that the applicant meets current Texas licensure requirements and has never had disciplinary action taken by any licensing authority or jurisdiction in which the applicant holds, or has held licensure and attestation that all information contained in, or referenced by, the application is complete and accurate and is not false or misleading; (vi) the required application processing licensure fee, which is not refundable; (vii) submitting fingerprints for a complete criminal background check; and (viii) passing the jurisprudence exam approved by the Board, effective September 1, 2008.

Adopted §217.5(b) requires an endorsement applicant who has not practiced nursing in another state within the four years immediately preceding his or her request for licensure to complete a refresher course, extensive orientation to the practice of nursing, or a nursing program of study that meets the requirements prescribed by the Board. The applicant must submit an Application for Six Month Temporary Permit (RN) or an Application for Six Month Temporary Permit (LVN), as applicable, to the Board for the limited purpose of completing the refresher course, extensive orientation to the practice of nursing, or nursing program of study. The applicant must also submit to the Board evidence of the successful completion of the refresher course, extensive orientation to the practice of nursing, or nursing program of study and complete the online Texas Board of Nursing Jurisprudence Prep Course; the Texas Board of Nursing Jurisprudence and Ethics Workshop; or a Texas Board of Nursing approved Nursing Jurisprudence and Ethics course. After completing these requirements, the applicant must then meet the following requirements: (i) graduation from an approved nursing education program; (ii) satisfactory completion of a licensure examination that meets the following requirements: (I) Vocational Nurse Licensure Examination: (-a-) prior to April 1982--a score of 350 on the SBTPE; (-b-) beginning October 1982 to September 1988--a score of 350 on the NCLEX-PN; and (-c-) October 1988 and after, a passing report on the NCLEX-PN; (II) Registered Nurse Licensure Examination: (-a-) prior to July 1982--a score of 350 on each of the five parts of the SBTPE; (-b-) prior to February 1989--a minimum score of 1600 on the NCLEX-RN; and (-c-) February 1989 and after, a passing report on the NCLEX-RN; (iii) licensure by another U.S. jurisdiction; (iv) for an applicant who has graduated from a nursing education program outside of the United States or National Council jurisdictions, verification of LVN licensure as required in §217.4(a)(1) or verification of RN licensure from the country of education or as evidenced in a Credential Evaluation Service (CES) Full Education Course-by-Course Report from the Commission on Graduates of Foreign Nursing Schools (CGFNS), Educational Records Evaluation Service (ERES), or

the International Education Research Foundation (IERF), as well as meeting all other requirements in §217.5(a)(2) - (3); (v) filing a completed "Application for Temporary License/Endorsement" containing: (I) personal identification and verification of required information in §217.5(a)(1) - (3); and (II) attestation that the applicant meets current Texas licensure requirements and has never had disciplinary action taken by any licensing authority or jurisdiction in which the applicant holds, or has held licensure and attestation that all information contained in, or referenced by, the application is complete and accurate and is not false or misleading; (vi) the required application processing licensure fee, which is not refundable; (vii) submitting fingerprints for a complete criminal background check; and (viii) passing the jurisprudence exam approved by the Board, effective September 1, 2008.

Adopted §217.5(c) adopts by reference the Application for Six Month Temporary Permit (RN) and the Application for Six Month Temporary Permit (LVN), which contain the instructions and requirements for a refresher course, extensive orientation to the practice of nursing, and a nursing program of study and are available at <http://www.bon.state.tx.us/olv/forms.html>.

Adopted §217.5(d) makes clear that a nurse who has had disciplinary action at any time by any licensing authority will not be eligible for temporary licensure under §217.5 until the nurse's eligibility determination has been completed.

Adopted §217.5(e) makes clear that, upon initial licensure by endorsement, a license is issued for a period ranging from six months to 29 months depending on the birth month. Licensees born in even-numbered years must renew their licenses in even-numbered years and licensees born in odd-numbered years must renew their licenses in odd-numbered years.

Adopted §217.5(f) states that, should it be ascertained from the application filed, or from other sources, that an applicant should have had an eligibility issue determined by way of a petition for declaratory order pursuant to the Occupations Code §301.257, the Board will treat and process the application as a petition for declaratory order under §213.30 of this title (relating to Declaratory Order of Eligibility for Licensure), and the applicant will be treated as a petitioner under that section and will be required to pay the non-refundable fee required by that section.

Summary of Comments and Agency Response. The Board did not receive any comments on the proposal.

Statutory Authority. The amendments are adopted under the Occupations Code §§301.251, 301.252, 301.256, 301.258, 301.259, 301.260, 301.303, and 301.151.

Section 301.251(a) states that a person may not practice or offer to practice professional nursing or vocational nursing in this state unless the person is licensed as provided by Chapter 301.

Section 301.251(b) states that, unless the person holds a license under Chapter 301, a person may not use, in connection with the person's name: (i) the title "Registered Nurse," "Professional Nurse," "Licensed Vocational Nurse," "Vocational Nurse," "Licensed Practical Nurse," "Practical Nurse," or "Graduate Nurse"; (ii) the abbreviation "R.N.," "L.V.N.," "V.N.," "L.P.N.," or "P.N."; or (iii) any other designation tending to imply that the person is a licensed registered nurse or vocational nurse.

Section 301.251(c) states that §301.251 does not apply to a person entitled to practice nursing in this state under Chapter 304.

Section 301.251(d) states that, unless the person holds a license under Chapter 301, a person may not use, in connection with the

person's name: (i) the title "nurse"; or (ii) any other designation tending to imply that the person is licensed to provide nursing care.

Section 301.252(a) provides that each applicant for a registered nurse license or a vocational nurse license must submit to the Board a sworn application that demonstrates the applicant's qualifications under Chapter 301, accompanied by evidence that the applicant: (i) has good professional character; (ii) has successfully completed a program of professional or vocational nursing education approved under §301.157(d); and (iii) has passed the jurisprudence examination approved by the Board as provided by §301.252(a-1).

Section 301.252(a-1) states that the jurisprudence examination shall be conducted on the licensing requirements under Chapter 301 and Board rules and other laws, rules, or regulations applicable to the nursing profession in this state. The Board shall adopt rules for the jurisprudence examination under §301.252(a)(3) regarding: (i) the development of the examination; (ii) applicable fees; (iii) administration of the examination; (iv) reexamination procedures; (v) grading procedures; and (vi) notice of results.

Section 301.252(b) states that the Board may waive the requirement of §301.252(a)(2) for a vocational nurse applicant if the applicant provides satisfactory sworn evidence that the applicant has completed an acceptable level of education in: (i) a professional nursing school approved under §301.157(d); or (ii) a school of professional nurse education located in another state or a foreign country.

Section 301.252(c) states that the Board by rule shall determine acceptable levels of education under §301.252(b).

Section 301.256 provides that, if the results of an examination taken under §301.253 or §301.255 satisfy the criteria established by the Board under that section, the Board shall issue to the applicant a license to practice professional nursing or vocational nursing in this state. The license must be signed by the Board's presiding officer and the Executive Director and attested by the Board's seal.

Section 301.258(a) states that, pending the results of a licensing examination, the Board may issue to an applicant who is a graduate of an approved educational program a permit to practice professional nursing under the direct supervision of a registered nurse or to practice vocational nursing under the direct supervision of a registered nurse or vocational nurse.

Section 301.258(b) states that the Board may not issue a permit under §301.258 to an applicant who has previously failed an examination administered by the Board or another state.

Section 301.258(c) provides that a permit issued under §301.258(a) expires on the date of receipt of: (i) a permanent license; or (ii) a notice from the Board that the permit holder has failed the examination.

Section 301.258(d) provides that the Board may issue a temporary permit to practice professional nursing or vocational nursing for the limited purpose of allowing a nurse to satisfy a requirement imposed by the Board necessary for: (i) renewal of an expired license; (ii) reactivation of an inactive license; or (iii) resuance of a suspended, revoked, or surrendered license.

Section 301.258(e) states that a permit issued under §301.258(d) expires on the earlier of: (i) the date of receipt of a permanent license; or (ii) six months after the date the permit is issued.

Section 301.258(f) provides that a person who holds a temporary permit issued under §301.258 is considered to be a licensed registered nurse or vocational nurse for all purposes except to the extent of any stipulation or limitation on practice imposed by the Board as a condition of issuing the permit.

Section 301.259 states that, on payment of a fee established by the Board, the Board may issue a license to practice as a registered nurse or vocational nurse in this state by endorsement without examination to an applicant who holds a registration certificate as a registered nurse or vocational nurse, as applicable, issued by a territory or possession of the United States or a foreign country if the Board determines that the issuing agency of the territory or possession of the United States or foreign country required in its examination the same general degree of fitness required by this state.

Section 301.260(a) states that an applicant for a license under Chapter 301 who is licensed as a registered nurse or vocational nurse by another state may qualify for a temporary license by endorsement to practice as a registered nurse or vocational nurse, as applicable, by submitting to the Board: (i) an endorsement fee as determined by the Board and a completed sworn application in the form prescribed by the Board; (ii) evidence that the person possessed, at the time of initial licensing as a nurse, the other qualifications necessary at that time to have been eligible for licensing in this state; and (iii) proof of initial licensing by examination and proof that the license and any other license issued to the applicant by another state have not been suspended, revoked, canceled, surrendered, or otherwise restricted.

Section 301.260(b) states that a holder of a temporary license under §301.260 is entitled to receive a permanent license if the applicant: (i) verifies the applicant's academic and professional credentials; and (ii) satisfies any other requirement established by statute.

Section 301.260(c) states that the Board shall grant or deny an application for a permanent license not later than the 180th day after the date the Board receives all required forms or information. Further, the Board may extend that deadline to allow for the receipt and tabulation of examination results.

Section 301.303(a) provides that the Board may recognize, prepare, or implement continuing competency programs for license holders under Chapter 301 and may require participation in continuing competency programs as a condition of renewal of a license. The programs may allow a license holder to demonstrate competency through various methods, including completion of targeted continuing education programs and consideration of a license holder's professional portfolio, including certifications held by the license holder.

Section 301.303(b) provides that the Board may not require participation in more than a total of 20 hours of continuing education in a two-year licensing period.

Section 301.303(c) provides that, if the Board requires participation in continuing education programs as a condition of license renewal, the Board by rule shall establish a system for the approval of programs and providers of continuing education.

Section 301.303(e) provides that the Board may adopt other rules as necessary to implement §301.303.

Section 301.303(f) provides that the Board may assess each program and provider under §301.303 a fee in an amount that is reasonable and necessary to defray the costs incurred in approving programs and providers.

Section 301.303(g) provides that the Board by rule may establish guidelines for targeted continuing education required under Chapter 301. The rules adopted under §301.303(g) must address: (i) the nurses who are required to complete the targeted continuing education program; (ii) the type of courses that satisfy the targeted continuing education requirement; (iii) the time in which a nurse is required to complete the targeted continuing education; (iv) the frequency with which a nurse is required to meet the targeted continuing education requirement; and (v) any other requirement considered necessary by the Board.

Section 301.151 provides that the Board may adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 6, 2011.

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CHAPTER 221. ADVANCED PRACTICE NURSES

22 TAC §221.6

Introduction. The Texas Board of Nursing (Board) adopts amendments to §221.6 (relating to Interim Approval) without changes to the proposed text published in the June 3, 2011, issue of the *Texas Register* (36 TexReg 3396) and will not be republished.

Reasoned Justification. The amendments are adopted under the authority of the Occupations Code §301.151 and §301.152 and are necessary to eliminate the availability of "interim approval" for certain individuals.

Section 301.152(b) authorizes the Board to adopt rules to approve a registered nurse as an advanced practice registered nurse. In 2001, the Board adopted rules that permitted an applicant to apply for "interim approval" to practice as an advanced practice registered nurse while awaiting permanent licensure. The Board amended these rules in 2008 to further clarify the requirements related to "interim approval". Currently, Board Rule §221.6 permits an applicant for advanced practice registered nurse licensure to practice in an advanced practice role (without prescriptive authority) while his/her application is being reviewed by the Board for final approval. This "interim approval" extends to applicants who are seeking licensure by endorsement from another state and applicants who have already taken and successfully passed a national certification examination, but are waiting for paperwork to be submitted to, or reviewed by, the Board. This "interim approval" also permits new graduates of advanced prac-

tice nursing educational programs to practice prior to sitting for their national certification examinations. In these situations, an applicant's "interim approval" immediately expires upon notification from a national certifying body that the individual has failed the national certification examination. Further, the applicant is required to immediately notify the Board of the examination results.

Despite these notification requirements, however, Board Staff has found that many new graduate applicants fail to promptly notify the Board of their examination results, as required by Board rule. Further, the vast majority of national certifying bodies do not notify the Board of individuals' examination results. As a result, Board Staff may not learn that a new graduate applicant with "interim approval" has failed a national certification examination until 9 - 12 months after the fact. Meanwhile, in most cases, the applicant has continued to practice in an advanced practice role under his or her "interim approval".

This issue was considered by the Advanced Practice Nursing Advisory Committee (Committee) at its October 4, 2010, and December 13, 2010, meetings. Following its discussions, the Committee unanimously voted to recommend to the Board that it eliminate the availability of "interim approval" for new graduates of advanced practice nursing educational programs who have not successfully passed an appropriate national certification examination. The Board considered the Committee's recommendation and the proposed amendments at its April, 2011, meeting, and voted to approve the proposed amendments.

Although Board Rule §221.6 was originally intended to provide flexibility and additional opportunity to qualified advanced practice registered nurse applicants, widespread noncompliance has prevented the rule from serving that purpose. The Board's mission is to protect the health, safety, and welfare of the public. When a new graduate applicant with "interim approval" fails a national certification examination, but continues to practice in an advanced practice role, a serious risk of harm to the public health and safety exists. National certification examinations are designed to test an applicant's competency in a specific advanced practice role and population focus area. If an applicant is unable to successfully pass the certification examination in his or her designated role and population focus area, the applicant may not be able to safely practice in that advanced practice role. Further, if the Board is unaware that the applicant has failed the national certification examination because the applicant fails to notify the Board as required, the Board's ability to remove the applicant from the advanced practice role is severely hindered, and the public remains at risk of harm. The adopted amendments are designed to address these issues and effectuate the mission of the Board.

Under the adopted amendments, "interim approval" will only be available to applicants who meet all of the requirements for permanent licensure, including passing a national certification examination in an appropriate advanced practice role and population focus area. In particular, new graduates of advanced practice nursing educational programs will only be eligible to receive "interim approval" if they have successfully passed an appropriate national certification examination prior to applying for "interim approval". "Interim approval" will remain available to applicants who have successfully passed a national certification examination and are seeking endorsement into Texas from another state and to applicants who have successfully passed a national certification examination and are waiting on the completion or submission of paperwork. By requiring all applicants to meet the

requirements for permanent licensure as an advanced practice registered nurse prior to applying for "interim approval", including successfully passing a national certification examination, the Board can better ensure that its practitioners are safe and competent to practice in their respective advanced practice roles.

How the Sections Will Function. Adopted §221.6(a) provides that the Board may grant "interim approval" to eligible advanced practice registered nurse applicants.

Adopted §221.6(b) sets forth the requirements that an applicant must meet in order to be eligible for "interim approval". Specifically, the adopted subsection requires an applicant to provide evidence of his or her current national certification in an advanced practice role and population focus area before being granted "interim approval". The adopted subsection also eliminates the availability of "interim approval" for new graduates of advanced practice registered nursing education programs who have not successfully completed a national certification examination.

Summary of Comments and Agency Response. The Board did not receive any comments on the proposal.

Statutory Authority. The amendments are adopted under the Occupations Code §301.151 and §301.152.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 301.152(a) defines "advanced practice nurse" as a registered nurse approved by the Board to practice as an advanced practice nurse on the basis of completion of an advanced educational program. The term includes a nurse practitioner, nurse midwife, nurse anesthetist, and clinical nurse specialist and is synonymous with "advanced nurse practitioner."

Section 301.152(b) authorizes the Board to adopt rules to: (i) establish specialized education or training, including pharmacology, that a registered nurse must have to carry out a prescription drug order under §157.052 and a system for assigning an identification number to a registered nurse who provides the Board with evidence of completing the specialized education and training requirement under §301.152(b)(1)(A); (ii) approve a registered nurse as an advanced practice nurse; and (iii) initially approve and biennially renew an advanced practice nurse's authority to carry out or sign a prescription drug order under Chapter 157.

Section 301.152(c) requires, at a minimum, the rules adopted under §301.152(b)(3) to: (i) require completion of pharmacology and related pathology education for initial approval; (ii) require continuing education in clinical pharmacology and related pathology in addition to any continuing education otherwise required under §301.303; and (iii) provide for the issuance of a prescription authorization number to an advanced practice nurse approved under §301.152.

Section 301.152(d) states that the signature of an advanced practice nurse attesting to the provision of a legally authorized service by the advanced practice nurse satisfies any documentation requirement for that service established by a state agency.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 6, 2011.

TRD-201102541

Jena Abel

Assistant General Counsel

Texas Board of Nursing

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Proposal publication date: June 3, 2011

For further information, please call: (512) 305-6822



PART 18. TEXAS STATE BOARD OF PODIATRIC MEDICAL EXAMINERS

CHAPTER 371. EXAMINATION AND LICENSURE

22 TAC §371.25

The Texas State Board of Podiatric Medical Examiners adopts the amendments to §371.25, concerning Residency Requirements, Program Responsibilities and Temporary Licensure, without changes to the proposed text as published in the January 14, 2011, issue of the *Texas Register* (36 TexReg 123). The text will not be republished.

The amendments to §371.25 are being adopted to clarify the responsibilities of a residency program, its directors and its residents (persons in training) by ensuring that limitations are adhered to. Such limitations are designed to ensure proper supervision of residents by their directors, that a program actually begun/matriculated is completed, and that residents are not utilized as fully licensed "Active" podiatrists while participating in their training program. The amendments will also ensure that while podiatry residents may prescribe controlled substances while in training, that they can only do so under the training facility's DPS and DEA drug registration while in the confines of the supervised residency training program.

No comments were received in response to the proposed rule amendments.

The amendments are being adopted under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the laws of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcements of the law regulating the practice of podiatry.

The adopted amendments for §371.25 implement Texas Occupations Code Chapter 202, Subchapter F, License Requirements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 7, 2011.

TRD-201102584

Janie Alonzo

Staff Services Officer V

Texas State Board of Podiatric Medical Examiners

Effective date: July 27, 2011

Proposal publication date: January 14, 2011

For further information, please call: (512) 305-7000



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 3. GENERAL PROVISIONS

SUBCHAPTER C. SERVICES AND PRODUCTS

31 TAC §3.31

The General Land Office (GLO) adopts the amendment of §3.31 relating to Fees. The adopted amendments are designed to address the cost recovery of processing highway right-of-way leases and pooling agreements. The amendments are adopted without changes to the proposed text as published in the June 3, 2011, issue of the *Texas Register* (36 TexReg 3402) and will not be republished.

INTRODUCTION AND BACKGROUND

The adopted amendments to §3.31(b)(19)(C) and (D) will amend the applicable fees for highway right-of-way lease processing, including the preparation of leases and for pooling applications, including the preparation and filing of pooling agreements. The GLO has increased these processing fees per event of application, renewal, assignment, or amendment to better reflect the cost of processing by staff. This amount adjusts the fee to reflect the current costs associated with the agency's services and activities and the value of those services and activities. The adopted increases in fees in §3.31(b)(19)(C) and (D) are the result of cost recovery studies performed by the GLO and were not mandated by the legislature.

COMMENTS BY THE PUBLIC

The GLO did not receive any comments on the amendments.

STATUTORY AUTHORITY

The amendments are adopted under the Texas Natural Resources Code §§31.051, 31.064, 51.174, and 52.324, which provide the GLO with the authority to set and collect certain fees and to make and enforce rules consistent with the law; and Texas Natural Resources Code §51.014(a), providing that the commissioner may adopt procedural and substantive rules which it considers necessary to administer, implement and enforce Chapter 51, Texas Natural Resources Code.

STATUTORY SECTIONS AFFECTED

Chapters 31, 32, 51 and 52 of the Texas Natural Resources Code are affected by the adopted amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 8, 2011.

TRD-201102585

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts new §19.326, concerning safety operations, in Subchapter D, Facility Construction, and the repeal of existing §19.326, concerning safety operations; and new §19.1914, concerning emergency preparedness and response, in Subchapter T, Administration, and the repeal of existing §19.1914, concerning disaster and emergency preparedness, in Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification. New §19.326 is adopted with changes to the proposed text published in the January 14, 2011, issue of the *Texas Register* (36 TexReg 127). New §19.1914 and repeal of §19.326 and §19.1914 are adopted without changes to the proposed text.

The new sections and repeals are adopted in response to the challenges faced and lessons learned during recent hurricane seasons. The purpose of the adoption is to ensure the health, safety, and well-being of residents during and after a disaster, such as acts of nature, spills of chemical or hazardous materials, major equipment failure, and acts of terrorism.

Adopted new §19.326, regarding safety operations, adds rules regarding inspection, testing, and maintenance of fire alarms, sprinkler systems, and generators, and provides requirements for smoking policies.

Adopted new §19.1914, regarding emergency preparedness and response, requires a nursing facility to develop an emergency preparedness and response plan that addresses the core functions of emergency management and designate an emergency preparedness coordinator, a facility staff person who has the authority to manage the facility's response to an emergency situation in accordance with the plan.

Sections 19.326 and 19.1914 are repealed to allow new rules on topics covered in these sections to be adopted.

DADS received written comments from one individual and the Texas Health Care Association. A summary of the comments and responses follows.

Comment: Concerning §19.326(m), a commenter asked whether the "NFPA 101 standards" differ from the 2000 edition of National Fire Protection Association (NFPA) 101. The commenter also asked where the NFPA 101 standards for alcohol-based hand rub dispensers are located.

Response: The NFPA issued a Tentative Interim Amendment to NFPA 101, Life Safety Code, 2000, "Alcohol-based Hand-rub Solutions" to Chapter 18, §18.3.2.7 (for new health care occupancies) and Chapter 19, §19.3.2.7 (for existing health care occupancies). This amendment was issued on April 15, 2004, with an effective date of May 5, 2004. This information can also be found in the Code of Federal Regulations (CFR), Title 42, Part 483, Subpart B, §483.70, "Physical Environment," which includes requirements in addition to the Tentative Interim Amendment to install alcohol-based hand rub dispensers. Therefore, if a facility chooses to install alcohol-based hand rub dispensers, these standards must be met in addition to the standards in the 2000 edition of NFPA 101. The agency revised §19.326(m) to reference CFR requirements for alcohol-based hand rub dispensers.

Comment: Concerning §19.326(m), a commenter asked how the public was supposed to be able to comment on the rules when the alcohol-based rub dispenser rules could not be found.

Response: The Centers for Medicare and Medicaid Services posted the final rules titled "Medicare and Medicaid Programs; Fire Safety Requirements for Certain Health Care Facilities; Amendment" in the Federal Register Vol. 71, Page 55326, on September 22, 2006. DADS notified providers of the final rules by Provider Letter #06-39, issued on November 9, 2006. The agency revised §19.326(m) to reference CFR requirements for alcohol-based hand rub dispensers.

Comment: Concerning §19.326(e), a commenter stated that the proposed rule change could be interpreted to mean that all rooms must have duplex receptacles in every room powered by a generator. This would be a significant expense to many nursing facilities. A number of years ago this issue was addressed by the state issuing a directive that nursing facilities could use hallway emergency outlets.

Response: The current rule states that if receptacles are not available, a facility must demonstrate that it can provide the benefits of patient-care related electrical appliances through alternative means in the event of a power outage. The adopted rule requires duplex receptacles to be installed, unless a facility can demonstrate that it can provide the benefits through acceptable alternative means in a power outage. The rule does not state that a facility must install duplex receptacles in all instances. An older facility may demonstrate that it has an alternative means to provide for patient care in the event of a power outage.

The agency is unaware of any directive that allows nursing facilities to use hallway emergency outlets without demonstrating that it can provide the diagnostic, therapeutic, or monitoring benefits of the patient-care-related electrical appliance through acceptable alternative means in the event of a power outage. The last statement issued by this agency concerning this rule was a Revision Notice on February 9, 2001, stating that "...facilities must demonstrate alternative means of providing the diagnostic, therapeutic, or monitoring benefits of non-life-support electrical appliances in the event of a power outage." The agency did not make any changes in response to this comment.

Comment: Concerning §19.326(e), a commenter stated that the wording does not specify if both beds require a duplex emergency outlet; it just states "at resident bed locations."

Response: The agency revised §19.326(e), adding the word "each" to clarify that a duplex receptacle must be at each resident bed location. This clarification is consistent with §19.334(a)(7) Architectural Space Planning and Utilization, which states, "Two

duplex or a fourplex grounding type receptacles must be provided beside the head of each bed," and with §19.341(d)(1)(V), which requires emergency systems to include duplex receptacles at each bed location where patient-care-related electrical appliances are utilized.

Comment: Concerning §19.326(e), a commenter stated that the way older nursing facilities are currently demonstrating that they can provide alternative diagnostic, therapeutic, or monitoring benefits of the patient-care-related electrical appliances in the event of a power outage is by providing readily available extension cords that can be used to plug in the red receptacles in the corridors that are powered by a generator.

Response: Section 19.326(r) states that a facility must not use electrical extension cords or multi-receptacle plug-in adaptors as a substitute for approved wiring methods in the facility. The requirement has been in place since July 2000. The agency allows nursing facilities to use extension cords to plug into red receptacles in the corridors in the event of a power outage in an emergency situation as a temporary alternative. However, this temporary alternative is not allowed as a permanent wiring method and the extension cords must be removed when normal power is restored. The agency did not make any changes in response to this comment.

Comment: Concerning §19.326(e), a commenter requested that consideration be given to problems older facilities would have meeting the requirements due to the expense of upgrading their main distribution panels.

Response: The appropriate readiness in an emergency disaster situation is to ensure that each resident's health, safety, and welfare is adequately protected by the nursing facility during a power outage, regardless of the age of the facility. As stated previously, duplex receptacles are not required in all instances if a facility can demonstrate that it has alternative means in a power outage. The agency did not make any changes in response to this comment.

Comment: Concerning §19.326(e), a commenter stated that the rule could offer an option for a rebate from the state to either pay for the upgrades or pay a substantial amount of the upgrades, similar to what the State of Louisiana did in respect to emergency generators.

Response: DADS has no authority to provide a rebate. The agency did not make any changes in response to this comment.

SUBCHAPTER D. FACILITY CONSTRUCTION

40 TAC §19.326

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health and Safety Code, Chapter 242, which authorizes DADS to license and regulate nursing facilities.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 8, 2011.

TRD-201102588

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

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Proposal publication date: January 14, 2011

For further information, please call: (512) 438-3734



40 TAC §19.326

The new section is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health and Safety Code, Chapter 242, which authorizes DADS to license and regulate nursing facilities.

§19.326. Safety Operations.

(a) A facility must have a program to inspect, test, and maintain the fire alarm system and must execute the program at least once every three months.

(1) The facility must contract with a company that is registered by the State Fire Marshal's Office to execute the program.

(2) The person who performs a service under the contract must be licensed by the State Fire Marshal's Office to perform the service and must complete, sign and date an inspection form similar to the inspection and testing form in National Fire Protection Association (NFPA) 72 for a service provided under the contract.

(3) The facility must ensure fire alarm system components that require visual inspection are visually inspected in accordance with NFPA 72.

(4) The facility must ensure fire alarm system components that require testing are tested in accordance with NFPA 72.

(5) The facility must ensure fire alarm system components that require maintenance are maintained in accordance with NFPA 72.

(6) The facility must ensure smoke dampers are inspected and tested in accordance with NFPA 101, 2000 Edition.

(7) The facility must maintain onsite documentation of compliance with this subsection.

(b) A facility must have a program to inspect, test and maintain the sprinkler system and must execute the program at least once every three months.

(1) The facility must contract with a company that is registered by the State Fire Marshal's Office to execute the program.

(2) The person who performs a service under the contract must be licensed by the State Fire Marshal's Office to perform the service and must complete, sign and date an inspection form similar to the inspection and testing form in NFPA 25 for a service provided under the contract.

(3) The facility must ensure sprinkler system components that require visual inspection are visually inspected in accordance with NFPA 13 and 25.

(4) The facility must ensure sprinkler system components that require testing are tested in accordance with the NFPA 13 and 25.

(5) The facility must ensure sprinkler system components that require maintenance are maintained in accordance with NFPA 13 and 25.

(6) The facility must ensure that individual sprinkler heads are inspected and maintained in accordance with NFPA 13 and 25.

(7) The facility must maintain onsite documentation of compliance with this subsection.

(c) If facility staff verify or suspect a malfunction of the fire alarm, emergency electrical, or sprinkler system, the facility must immediately investigate and correct the condition. In addition, the facility must immediately report the failure of the fire alarm, emergency electrical, or sprinkler system to all facility staff and the local fire authority.

(d) If emergency generators are required or provided, a facility must have a program to maintain, operate, and test all emergency generators, including all appurtenant components, and must execute the program at least once every week.

(1) The facility must use a properly instructed person to oversee and execute the program.

(2) The facility must ensure generator components are inspected, tested, and maintained in accordance with NFPA 37, 70, 99, and 110.

(3) The facility must ensure all generators are operated, under load, for at least 30 minutes each week.

(4) The person who executes the program must maintain a signed and dated record or log of inspections, tests and maintenance performed.

(5) For each required operation of the generator under the program, the record or log must include the information necessary to verify:

(A) the total time taken to transfer the load to emergency power;

(B) the total time the generator operated under load;

(C) the total time the facility's emergency system remained on generator power after restoration of normal utility power; and

(D) the total time the generator operated (without load) after the facility's return to normal utility power.

(6) The facility must ensure the condition and proper operation of all emergency lighting is inspected and tested at least once every week under the program.

(7) The facility must maintain onsite documentation of compliance with this subsection.

(e) Duplex receptacles powered through the emergency electrical system must be installed at each resident bed location where patient-care-related electrical appliances are in use, unless a facility can

demonstrate that it can provide the diagnostic, therapeutic, or monitoring benefits of the patient-care-related electrical appliances through acceptable alternative means in the event of a power outage.

(f) A facility must conduct a functional test on every required battery emergency lighting system at 30-day intervals for a minimum of 1/2 hour. The facility must also conduct an annual test for a minimum of 1 1/2 hours. The lighting system must be fully operational for the duration of the testing. The facility must maintain an onsite written record of all tests performed and make those records available to the authority having jurisdiction during an inspection.

(g) A facility must ensure that a person licensed by the State Fire Marshal's office inspects and services automatic fixed fire extinguishment systems mounted in kitchen range hoods at least once every six months in accordance with NFPA 96. The facility must maintain, onsite, a written and signed report of the inspection and service performed. The facility must keep the hood, exhaust ducts, and filters clean and free of accumulated grease.

(h) A facility must inspect and maintain portable fire extinguishers.

(1) Facility staff must visually inspect portable fire extinguishers monthly. Facility staff conducting the monthly visual inspection must ensure portable extinguishers are protected from damage, kept on their mounting brackets or in cabinets at all times, and kept in the proper condition and working order.

(2) A facility must ensure that a person licensed by the State Fire Marshal's office inspects and maintains portable fire extinguishers at least once every 12 months in accordance with NFPA 10.

(3) The facility must maintain, onsite, a record of all fire extinguisher inspections and maintenance performed.

(i) A facility using gas must have the gas piping lines between the meter and appliances tested for leaks annually by a person licensed with the State Board of Plumbing Examiners. The facility must maintain, onsite, a written and signed report of these tests. The facility must note and correct any unsatisfactory conditions immediately.

(j) A facility must formulate, adopt, and enforce smoking policies.

(1) The facility's policies must comply with all applicable codes, regulations, and standards, including local ordinances.

(2) The facility is responsible for informing residents, staff, visitors, and other affected parties of smoking policies through the distribution and posting of policies.

(3) A facility must prohibit smoking in any room, ward, or compartment where flammable liquids, combustible gas, or oxygen are used or stored and in any other hazardous locations. These areas must be posted with "No Smoking" signs.

(4) A facility must provide ashtrays of noncombustible material and safe design in all areas where smoking is permitted.

(5) A facility must provide a metal container with a self-closing cover device into which ashtrays can be emptied in all areas where smoking is permitted.

(k) A facility must not allow storage of combustible products in facility rooms with gas-fired equipment.

(l) A facility must not allow storage of volatile or flammable liquids or materials anywhere within the facility building.

(m) A facility may install alcohol-based hand rub dispensers if the dispensers are:

(1) installed in a manner that:

(A) does not conflict with any state or local codes that prohibit or otherwise restrict the placement of alcohol-based hand rub dispensers in health care facilities;

(B) minimizes leaks and spills that could lead to falls;

(C) adequately protects against access by vulnerable populations; and

(D) complies with chapter 18.3.2.7 or chapter 19.3.2.7 of the 2000 edition of the Life Safety Code, as amended by NFPA Temporary Interim Amendment 00-1 (101) and the Code of Federal Regulations, Title 42, Part 483, Subpart B, Requirements for Long Term Care Facilities; and

(2) maintained in accordance with dispenser manufacturer guidelines.

(n) A facility must not store or leave unattended medical equipment, carts, wheelchairs, tables, furniture, dispensing machines, or similar physical objects in corridors or other ways of egress that reduce the required minimum clear width for a corridor in accordance with NFPA 101, 2000 Edition.

(o) A facility must keep smoke doors, fire doors, and doors to hazardous rooms in the facility closed and not prop or wedge a door open. The facility may use only approved devices to hold open a door, such as alarm-activated electromagnetic hold-open devices, except a facility may not use any device to hold open a door to a room classified as a hazardous room.

(p) The facility must post building evacuation routes at prominent locations throughout the facility.

(q) A facility must provide approved electrical receptacles in quantity and location for the normal use of appliances in the facility.

(r) A facility must not use electrical extension cords or multi-receptacle plug-in adaptors as a substitute for approved wiring methods in the facility.

(s) A facility may use a listed and approved surge-protection device for equipment for which the manufacturer recommends surge protection, but in no case may the facility use a surge-protection device to increase the number of existing electrical outlets in a room.

(t) A facility must remove all abandoned utilities, such as electrical wiring, ducts, and pipes from the facility when no longer in use. The facility may, however, leave an existing damper that is no longer required by NFPA 101 in-place and inoperable, if the damper is in a duct penetration of a smoke barrier in a fully ducted heating, ventilating, and air conditioning system; the damper is permanently secured in the open position; and quick-response sprinklers have been provided for the smoke compartments on both sides of the smoke barrier.

(u) A facility must have and implement as necessary a fire safety plan that:

(1) includes the provisions described in the Operating Features section of the NFPA 101 Life Safety Code, 2000 Edition, Chapter 18 (for new healthcare occupancies) and Chapter 19 (for existing healthcare occupancies) and concerning:

(A) use of alarms;

(B) transmission of alarm to fire department;

(C) response to alarms;

(D) isolation of fire;

(E) evacuation of immediate area;

(F) evacuation of smoke compartment;

(G) preparation of floors and building for evacuation; and

(H) extinguishment of fire;

(2) includes procedures for:

(A) conducting a fire drill on each work shift at least once per quarter with at least one fire drill conducted each month; and

(B) completing the form titled, "DADS Fire Drill Report" for each fire drill conducted.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 8, 2011.

TRD-201102589

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

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Proposal publication date: January 14, 2011

For further information, please call: (512) 438-3734



SUBCHAPTER T. ADMINISTRATION

40 TAC §19.1914

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health and Safety Code, Chapter 242, which authorizes DADS to license and regulate nursing facilities.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

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40 TAC §19.1914

The new section is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health and Safety Code, Chapter 242, which authorizes DADS to license and regulate nursing facilities.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-3734



40 TAC §19.1921

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts an amendment to §19.1921 in Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification, without changes to the proposed text published in the January 7, 2011, issue of the *Texas Register* (36 TexReg 28).

The amendment is adopted, in part, to implement House Bill (H.B.) 1081, 81st Legislature, Regular Session, 2009, which added Texas Health and Safety Code, §242.042(e). Section 242.042(e) requires DADS to post to its website detailed compliance information, including information regarding resident rights and responsibilities in a nursing facility. The amendment requires a nursing facility to upload to the DADS website a statement of all facility requirements involving resident rights and responsibilities that are not in the general statement of resident rights and responsibilities given to a resident upon admission to the facility. A nursing facility is also required to update the statement if changes are made after the initial posting. Other changes to §19.1921 relate to denial of admission of a resident being transferred from a facility undergoing emergency closure, the posting of and management of resident personal property. In addition, a statutory citation regarding concealed handguns is amended to reference a more appropriate provision in state law.

DADS received written comments from one individual. A summary of the comments and the responses follows.

Comment: The commenter stated that the proposed rule goes far beyond the ostensible impetus for the proposal. H.B. 1081 can be *entirely* implemented by posting detailed compliance information regarding each nursing facility on the DADS website

and updating the website once per month to provide the most current compliance information.

Response: Texas Health and Safety Code §242.042(e) requires DADS to post information a nursing facility is required to make accessible under §242.042(c), including information required under §242.504 regarding resident rights and responsibilities. Thus, the agency must ensure that DADS obtains information a facility has given to a resident, as required by §242.504. The agency also determined it was necessary to amend other provisions within the section to clarify requirements and to update a statutory citation.

Comment: Concerning the proposed deletion of §19.1921(a)(1) and (2), the commenter stated that the contention by the agency that the resident admission process provides sufficient protections to residents seeking admission to another facility due to an emergency closure is vague; the agency does not articulate in what section of the rules the protections are found. The commenter also stated that the agency certainly does not claim that there is any inconsistency between current 40 TAC §19.1921(a)(1) and (2) and any other rule. The commenter stated that the agency should maintain §19.1921(a) because it provides information directly to DADS regarding refusals to admit applicants.

Response: In reviewing the transfer process resulting from an emergency closure, the agency determined that this requirement does not add value to the process. A facility is not required to admit an applicant, so providing a reason to DADS for refusing to admit an applicant is not necessary. Further, the agency believes that the process provided under 40 TAC §19.2108(d), Emergency Suspension and Closing Order, under which DADS arranges for a resident transfer and gives the resident an opportunity to designate a preference for a specific facility, adequately addresses resident transfer in an emergency closure. Therefore, the agency declines to make the suggested change.

Comment: Concerning proposed §19.1921(e)(8), the commenter proposed adding the following: "and the resident and the resident's responsible party must be provided directly by the facility in language that the resident and responsible party understand, a current copy of the information that facility posts to comply with this rule." The commenter stated that this addition is to ensure that the resident and the resident's responsible party receive any such changes directly.

Response: Section §19.1921(e) relates to the posting requirements that a facility must conspicuously and prominently post in the facility. A facility is currently required to provide residents a copy of these rights and responsibilities and any changes to those rights in languages they understand under §19.403(a). Therefore, the agency declines to make the suggested change.

Comment: Concerning proposed §19.1921(p), the commenter suggested adding a clause stating, "the uploading by the facility constitutes an assurance and representation that the facility has given direct notice to each resident and responsible party, in language they can understand, of the revised statement."

Response: The agency declines to make the suggested change because adding such a clause to §19.1921(p) is not necessary because §19.403(a) requires notice and provides protection to residents and responsible parties.

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of

services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 242, which authorizes DADS to license and regulate nursing facilities.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 6, 2011.

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Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-3734



CHAPTER 97. LICENSING STANDARDS FOR HOME AND COMMUNITY SUPPORT SERVICES AGENCIES

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts amendments to §97.256, concerning emergency preparedness planning and implementation, and §97.602, concerning administrative penalties, in Chapter 97, Licensing Standards for Home and Community Support Services Agencies, with changes to the proposed text published in the April 1, 2011, issue of the *Texas Register* (36 TexReg 2100).

The amendments are adopted to comply with House Bill (H.B.) 2558, 81st Legislature, Regular Session, 2009. H.B. 2558 amended Texas Health and Safety Code, Chapter 142, by adding §142.0201, relating to Registration for Evacuation and Disaster Preparedness. Section 142.0201 requires a home and community support services agency (HCSSA) to: 1) assist a client with registering for disaster evacuation assistance through 2-1-1 services provided by the Texas Information and Referral Network, and 2) counsel a client regarding disaster preparedness.

In §97.256(h)(4) the word "management," which was inadvertently left out of the phrase "local, state, and federal emergency management agencies," was added.

In §97.602, the word "team" was deleted from the phrase "emergency preparedness and response team" on the Severity Level A violations table rule cite for §97.256(j) and (k).

DADS received no comments regarding adoption of the amendments.

SUBCHAPTER C. MINIMUM STANDARDS FOR ALL HOME AND COMMUNITY SUPPORT SERVICES AGENCIES

DIVISION 3. AGENCY ADMINISTRATION

40 TAC §97.256

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 142, which provides DADS with the authority to adopt rules for the licensing and regulation of home and community support services agencies.

§97.256. *Emergency Preparedness Planning and Implementation.*

(a) An agency must have a written emergency preparedness and response plan that comprehensively describes its approach to a disaster that could affect the need for its services or its ability to provide those services. The written plan must be based on a risk assessment that identifies the disasters from natural and man-made causes that are likely to occur in the agency's service area. With the exception of a freestanding hospice inpatient unit, DADS does not require an agency to physically evacuate or transport a client.

(b) Agency personnel that must be involved with developing, maintaining, and implementing an agency's emergency preparedness and response plan include:

- (1) the administrator;
- (2) the supervising nurse, if the agency is required to employ or contract with a supervising nurse as required by §97.243 of this subchapter (relating to Administrative and Supervisory Responsibilities);
- (3) the agency disaster coordinator; and
- (4) the alternate disaster coordinator.

(c) An agency's written emergency preparedness and response plan must:

- (1) designate, by title, an employee, and at least one alternate employee to act as the agency's disaster coordinator;
- (2) include a continuity of operations business plan that addresses emergency financial needs, essential functions for client services, critical personnel, and how to return to normal operations as quickly as possible;
- (3) include how the agency will monitor disaster-related news and information, including after hours, weekends, and holidays, to receive warnings of imminent and occurring disasters;
- (4) include procedures to release client information in the event of a disaster, in accordance with the agency's written policy required by §97.301(a)(2) of this subchapter (relating to Client Records); and

(5) describe the actions and responsibilities of agency staff in each phase of emergency planning, including mitigation, preparedness, response, and recovery.

(d) The response and recovery phases of the plan must describe:

- (1) the actions and responsibilities of agency staff when warning of an emergency is not provided;
- (2) who at the agency will initiate each phase;

(3) a primary mode of communication and alternate communication or alert systems in the event of telephone or power failure; and

(4) procedures for communicating with:

(A) staff;

(B) clients or persons responsible for a client's emergency response plan;

(C) local, state, and federal emergency management agencies; and

(D) other entities including DADS and other healthcare providers and suppliers.

(e) An agency's emergency preparedness and response plan must include procedures to triage clients that allow the agency to:

(1) readily access recorded information about an active client's triage category in the event of an emergency to implement the agency's response and recovery phases, as described in subsection (d) of this section; and

(2) categorize clients into groups based on:

(A) the services the agency provides to a client;

(B) the client's need for continuity of the services the agency provides; and

(C) the availability of someone to assume responsibility for a client's emergency response plan if needed by the client.

(f) The agency's emergency preparedness and response plan must include procedures to identify a client who may need evacuation assistance from local or state jurisdictions because the client:

(1) cannot provide or arrange for his or her transportation; or

(2) has special health care needs requiring special transportation assistance.

(g) If the agency identifies a client who may need evacuation assistance, as described in subsection (f) of this section, agency personnel must provide the client with the amount of assistance the client requests to complete the registration process for evacuation assistance if the client:

(1) wants to register with the Transportation Assistance Registry, accessed by dialing 2-1-1; and

(2) is not already registered, as reported by the client or legally authorized representative.

(h) An agency must provide and discuss the following information about emergency preparedness with each client:

(1) the actions and responsibilities of agency staff during and immediately following an emergency;

(2) the client's responsibilities in the agency's emergency preparedness and response plan;

(3) materials that describe survival tips and plans for evacuation and sheltering in place; and

(4) a list of community disaster resources that may assist a client during a disaster, including the Transportation Assistance Registry available through 2-1-1 Texas, and other community disaster resources provided by local, state, and federal emergency management agencies. An agency's list of community disaster resources must include information on how to contact the resources directly or instruc-

tions to call 2-1-1 for more information about community disaster resources.

(i) An agency must orient and train employees, volunteers, and contractors about their responsibilities in the agency's emergency preparedness and response plan.

(j) An agency must complete an internal review of the plan at least annually, and after each actual emergency response, to evaluate its effectiveness and to update the plan as needed.

(k) As part of the annual internal review, an agency must test the response phase of its emergency preparedness and response plan in a planned drill if not tested during an actual emergency response. Except for a freestanding hospice inpatient unit, a planned drill can be limited to the agency's procedures for communicating with staff.

(l) An agency must make a good faith effort to comply with the requirements of this section during a disaster. If the agency is unable to comply with any of the requirements of this section, it must document in the agency's records attempts of staff to follow procedures outlined in the agency's emergency preparedness and response plan.

(m) An agency is not required to continue to provide care to clients in emergency situations that are beyond the agency's control and that make it impossible to provide services, such as when roads are impassable or when a client relocates to a place unknown to the agency. An agency may establish links to local emergency operations centers to determine a mechanism by which to approach specific areas within a disaster area in order for the agency to reach its clients.

(n) If written records are damaged during a disaster, the agency must not reproduce or recreate client records except from existing electronic records. Records reproduced from existing electronic records must include:

(1) the date the record was reproduced;

(2) the agency staff member who reproduced the record; and

(3) how the original record was damaged.

(o) Notwithstanding the provisions specified in Division 2 of this subchapter (relating to Conditions of a License), no later than five working days after an agency temporarily relocates a place of business, or temporarily expands its service area resulting from the effects of an emergency or disaster, an agency must notify and provide the following information to the DADS Home and Community Support Services Agencies licensing unit:

(1) if temporarily relocating a place of business:

(A) the license number for the place of business and the date of relocation;

(B) the physical address and phone number of the location; and

(C) the date the agency returns to a place of business after the relocation; or

(2) if temporarily expanding the service area to provide services during a disaster:

(A) the license number and revised boundaries of the service area;

(B) the date the expansion begins; and

(C) the date the expansion ends.

(p) An agency must provide the notice and information described in subsection (o) of this section by fax or email. If fax and

email are unavailable, the agency may notify the DADS licensing unit by telephone, but must provide the notice and information in writing as soon as possible. If communication with the DADS licensing unit is not possible, the agency must provide the notice and information by fax, e-mail, or telephone to the designated survey office.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 8, 2011.

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Department of Aging and Disability Services

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For further information, please call: (512) 438-3734



SUBCHAPTER F. ENFORCEMENT

40 TAC §97.602

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 142, which provides DADS with the authority to adopt rules for the licensing and regulation of home and community support services agencies.

§97.602. *Administrative Penalties.*

(a) Assessing penalties. DADS may assess an administrative penalty against a person who violates:

- (1) the statute;
- (2) a provision in this chapter for which a penalty may be assessed; or
- (3) Occupations Code, §102.001, Soliciting Patients, if related to the provision of home health, hospice, or personal assistance services.

(b) Criteria for assessing penalties. DADS assesses administrative penalties in accordance with the schedule of appropriate and graduated penalties established in this section.

(1) The schedule of appropriate and graduated penalties for each violation is based on the following criteria:

(A) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard of the violation to the health or safety of clients;

(B) the history of previous violations by a person or a controlling person with respect to that person;

(C) whether the affected agency identified the violation as part of its internal quality assurance process and made a good faith, substantial effort to correct the violation in a timely manner;

- (D) the amount necessary to deter future violations;
- (E) efforts made to correct the violation; and
- (F) any other matters that justice may require.

(2) In determining which violation warrants a penalty, DADS considers:

(A) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard of the violation to the health or safety of clients; and

(B) whether the affected agency identified the violation as part of its internal quality assurance program and made a good faith, substantial effort to correct the violation in a timely manner.

(c) Opportunity to correct. Except as provided in subsections (e) and (f) of this section, DADS provides an agency with an opportunity to correct a violation in accordance with the time frames established in §97.527(g)(2) of this chapter (relating to Post-Survey Procedures) before assessing an administrative penalty if a plan of correction has been implemented.

(d) Minor violations.

(1) DADS may not assess an administrative penalty for a minor violation unless the violation is of a continuing nature or is not corrected in accordance with an accepted plan of correction.

(2) DADS may assess an administrative penalty for a subsequent occurrence of a minor violation when cited within three years from the date the agency first received written notice of the violation.

(3) DADS does not assess an administrative penalty for a subsequent occurrence of a minor violation when cited more than three years from the date the agency first received written notice of the violation.

(e) No opportunity to correct. DADS may assess an administrative penalty without providing an agency with an opportunity to correct a violation if DADS determines that the violation:

- (1) results in serious harm to or death of a client;
- (2) constitutes a serious threat to the health or safety of a client;
- (3) substantially limits the agency's capacity to provide care;
- (4) involves the provisions of Texas Human Resources Code, Chapter 102, Rights of the Elderly;
- (5) is a violation in which a person:

(A) makes a false statement, that the person knows or should know is false of a material fact:

(i) on an application for issuance or renewal of a license or in an attachment to the application; or

(ii) with respect to a matter under investigation by DADS;

(B) refuses to allow a representative of DADS to inspect a book, record, or file required to be maintained by an agency;

(C) willfully interferes with the work of a representative of DADS or the enforcement of this chapter;

(D) willfully interferes with a representative of DADS preserving evidence of a violation of this chapter or a rule, standard, or order adopted or license issued under this chapter;

(E) fails to pay a penalty assessed by DADS under this chapter not later than the 10th day after the date the assessment of the penalty becomes final; or

(F) fails to submit:

(i) a plan of correction not later than the 10th day after the date the person receives a statement of licensing violations; or

(ii) an acceptable plan of correction not later than the 30th day after the date the person receives notification from DADS that the previously submitted plan of correction is not acceptable.

(f) Violations relating to Advance Directives. As provided in Texas Health and Safety Code, §142.0145, DADS assesses an administrative penalty of \$500 for a violation of §97.283 of this chapter (relating to Advance Directives) without providing an agency with an opportunity to correct the violation.

(g) Penalty calculation and assessment.

(1) Each day that a violation occurs before the date on which the person receives written notice of the violation is considered one violation.

(2) Each day that a violation occurs after the date on which an agency receives written notice of the violation constitutes a separate violation.

(h) Schedule of appropriate and graduated penalties.

(1) If two or more rules listed in paragraphs (2) and (3) of this subsection relate to the same or similar matter, one administrative penalty may be assessed at the higher severity level violation.

(2) Severity Level A violations.

(A) The penalty range for a Severity Level A violation is \$100 - \$250 per violation.

(B) A Severity Level A violation is a violation that has or has had minor or no client health or safety significance.

(C) DADS assesses a penalty for a Severity Level A violation only if the violation is of a continuing nature or was not corrected in accordance with an accepted plan of correction.

(D) DADS may assess a separate Severity Level A administrative penalty for each of the rules listed in the following table. Figure: 40 TAC §97.602(h)(2)(D)

(3) Severity Level B violations.

(A) The penalty range for a Severity Level B violation is \$500 - \$1,000 per violation.

(B) A Severity Level B violation is a violation that:

(i) results in serious harm to or death of a client;

(ii) constitutes an actual serious threat to the health or safety of a client; or

(iii) substantially limits the agency's capacity to provide care.

(C) The penalty for a Severity Level B violation that:

(i) results in serious harm to or death of a client is \$1,000;

(ii) constitutes an actual serious threat to the health or safety of a client is \$500 - \$1,000; and

(iii) substantially limits the agency's capacity to provide care is \$500 - \$750.

(D) As provided in subsection (e) of this section, a Severity Level B violation is a violation for which DADS may assess an administrative penalty without providing an agency with an opportunity to correct the violation.

(E) DADS may assess a separate Severity Level B administrative penalty for each of the rules listed in the following table. Figure: 40 TAC §97.602(h)(3)(E)

(i) Violations for which DADS may assess an administrative penalty of \$500.

(1) DADS may assess an administrative penalty of \$500 for each of the violations listed in subsection (e)(4) and (5) of this section, without providing an agency with an opportunity to correct the violation.

(2) A separate penalty may be assessed for each of these violations.

(j) Proposal of administrative penalties.

(1) If DADS assesses an administrative penalty, DADS provides a written notice of violation letter to an agency. The notice includes:

(A) a brief summary of the violation;

(B) the amount of the proposed penalty; and

(C) a statement of the agency's right to a formal administrative hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(2) An agency may accept DADS' determination not later than 20 days after the date on which the agency receives the notice of violation letter, including the proposed penalty, or may make a written request for a formal administrative hearing on the determination.

(A) If an agency notified of a violation accepts DADS' determination, the DADS commissioner or the DADS commissioner's designee issues an order approving the determination and ordering that the agency pay the proposed penalty.

(B) If an agency notified of a violation does not accept DADS' determination, the agency must submit to the Health and Human Services Commission a written request for a formal administrative hearing on the determination and must not pay the proposed penalty. Remittance of the penalty to DADS is deemed acceptance by the agency of DADS' determination, is final, and waives the agency's right to a formal administrative hearing.

(C) If an agency notified of a violation fails to respond to the notice of violation letter within the required time frame, the DADS commissioner or the DADS commissioner's designee issues an order approving the determination and ordering that the agency pay the proposed penalty.

(D) If an agency requests a formal administrative hearing, the hearing is held in accordance with the statute, §142.0172, §142.0173, and the formal hearing procedures in 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act), and 40 TAC Chapter 91 (relating to Hearings Under the Administrative Procedure Act).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 8, 2011.



CHAPTER 98. ADULT DAY CARE AND DAY ACTIVITY AND HEALTH SERVICES REQUIREMENTS

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts an amendment to §98.42, concerning safety, in Subchapter C, Facility Construction Procedures, and new §98.64, concerning emergency preparedness and response, in Subchapter D, Licensure and Program Requirements, in Chapter 98, Adult Day Care and Day Activity and Health Services Requirements. The amendment to §98.42 is adopted with changes to the proposed text published in the April 1, 2011, issue of the *Texas Register* (36 TexReg 2105). New §98.64 is adopted without changes to the proposed text.

The adoption is in response to challenges faced during recent hurricane seasons. The purpose of the adoption is to ensure the health, safety, and well-being of adult day care clients during and after a disaster.

The adopted rule reorganizes §98.42 and adds specific requirements relating to National Fire Protection Association standards. Adopted new §98.64 requires licensed adult day care facilities to develop emergency preparedness and response plans that address core functions of emergency management and to designate an emergency preparedness coordinator, a facility staff person who has the authority to manage the facility's response to an emergency situation in accordance with the plan.

DADS received written comment from one individual. A summary of the comment and response follows.

Comment: Concerning §98.42(c)(1)(C), the commenter stated that information regarding alcohol-based hand rub dispensers could not be found in the 2000 edition of the National Fire Protection Association (NFPA) 101 and asked where the standards can be found.

Response: The 2000 edition of the NFPA 101 does not include specific information relating to the installation of alcohol-based hand rub dispensers. This information is included in Chapters 16 and 17 of the 2009 edition of the Life Safety Code. DADS currently requires compliance with the 2000 edition of the NFPA 101 for adult day care facilities so the agency has deleted §98.42(c)(1)(C), which referenced the installation of alcohol-based hand rub dispensers.

SUBCHAPTER C. FACILITY CONSTRUCTION PROCEDURES

40 TAC §98.42

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including

DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Human Resource Code, Chapter 103, which provides DADS with the authority to license and regulate adult day care facilities.

§98.42. Safety.

(a) Environmental safety.

(1) The physical plant safety requirements are designed to provide safety to the clients, participants, or adult individuals receiving day care.

(2) The facility must conform to all applicable state laws and local ordinances pertaining to occupancy. When these laws, codes, and ordinances are more stringent than the standards in this section, the more stringent requirements govern. If state laws or local codes or ordinances conflict with the requirements of these standards, DADS' Regulatory Services Licensing and Credentialing Section will be so informed so that these conflicts may be legally resolved.

(3) The facility must meet the provisions and requirements concerning accessibility for individuals with disabilities in the following laws and regulations: the Americans with Disabilities Act (ADA) of 1990 (Title 42, United States Code, Chapter 126); Title 28, Code of Federal Regulations, Part 35; Texas Government Code, Chapter 469, Elimination of Architectural Barriers; and 16 TAC, Chapter 68, Elimination of Architectural Barriers. Plans for new construction, substantial renovations, modifications, and alterations must be submitted to the Texas Department of Licensing and Regulation (Attn: Elimination of Architectural Barriers Program) for accessibility approval under Texas Government Code, Chapter 469. At least 50% of the client restrooms must be in accordance with ADA. Exception: Facilities licensed for 45 or fewer persons may provide one unisex restroom in accordance with accessibility requirements.

(4) DADS' jurisdiction extends beyond the licensed facility when the licensed area is only a part of a building or floor that is not fire-separated in accordance with the Life Safety Code, NFPA 101, 2000 edition, §16.1.2, New Day-Care Centers, or Life Safety Code, NFPA 101, 2000 edition, §17.1.2, Existing Day-Care Centers with Mixed Occupancies.

(b) Life Safety Code, NFPA 101, 2000 edition.

(1) The principles of the Life Safety Code, NFPA 101, 2000 edition, under Chapter 16 for new day-care centers or Chapter 17 for existing day-care centers, and operating features under §16.7 or §17.7, must be used in establishing life safety requirements for adult day care facilities, with the interpretation and exceptions as listed in paragraphs (2) and (3) of this subsection. Chapter 16 of the Life Safety Code, NFPA 101, 2000 edition, is applicable to new construction, conversions of existing unlicensed buildings, remodeling, and additions conducted after April 1, 2007. Chapter 17 of the Life Safety Code, NFPA 101, 2000 edition, is applicable to existing adult day-care facilities licensed before April 1, 2007. Life safety features and equipment installed in existing buildings that are now in excess of what is required by the Life Safety Code, NFPA 101, 2000 edition, must continue to be maintained or may be completely removed if prior written approval is obtained from DADS.

(2) Interpretations of the Life Safety Code, NFPA 101, 2000 edition, chapters 16 and 17, are as follows:

(A) The principles of chapters 16 and 17 apply to any size facility requiring licensing with four or more clients or participants.

(B) The principles of §16.1.4.2 and §17.1.4.2 relating to a building or portion thereof used less than 24 hours per day to house more than three adults requiring care, maintenance, and supervision by other than a relative apply to all facilities requiring licensing. A client must be ambulatory or semi-ambulatory and must not be bedridden. A client must not exhibit behavior that is harmful to the client or others.

(C) The manual fire alarm system and automatic smoke detection system must be installed in accordance with NFPA 72 National Fire Alarm Code series and state fire marshal licensing requirements.

(D) The facility must have a program to inspect, test, and maintain the fire alarm system and must execute the program at least once every six months.

(i) The facility must contract with a company that is registered by the State Fire Marshal's Office to execute the program.

(ii) The person who performs a service under the contract must be licensed by the State Fire Marshal's Office to perform the service and must complete, sign, and date an inspection form similar to the inspection and testing form in NFPA 72 for a service provided under the contract.

(iii) The facility must ensure fire alarm system components that require visual inspection are visually inspected in accordance with NFPA 72.

(iv) The facility must ensure fire alarm system components that require testing are tested in accordance with the NFPA 72.

(v) The facility must ensure fire alarm system components that require maintenance are maintained in accordance with NFPA 72.

(vi) The facility must ensure smoke dampers are inspected and tested in accordance with NFPA 101, 2000 edition.

(vii) The facility must maintain onsite documentation of compliance with this subsection and have available for examination by DADS, operation and maintenance manuals, and a written sequence of operation.

(E) If the facility has a complete NFPA 13 system, the facility must have a program to inspect, test, and maintain the sprinkler system and must execute the program at least once every six months.

(i) The facility must contract with a company that is registered by the State Fire Marshal's Office to execute the program.

(ii) The person who performs a service under the contract must be licensed by the State Fire Marshal's Office to perform the service and must complete, sign, and date an inspection form similar to the inspection and testing form in NFPA 25 for a service provided under the contract.

(iii) The facility must ensure sprinkler system components that require visual inspection are visually inspected in accordance with NFPA 13 and 25.

(iv) The facility must ensure sprinkler system components that require testing are tested in accordance with the NFPA 13 and 25.

(v) The facility must ensure sprinkler system components that require maintenance are maintained in accordance with NFPA 13 and 25.

(vi) The facility must ensure that individual sprinkler heads are inspected and maintained in accordance with NFPA 13 and 25.

(vii) The facility must maintain onsite documentation of compliance with this subsection and have available for examination by DADS as built drawings, operation and maintenance manuals, and a written sequence of operation.

(F) All facilities must follow the Life Safety Code, NFPA 101, 2000 edition, chapters 16 or 17, including the following:

(i) If a center is located in a building containing mixed occupancies, the occupancies must be separated by one-hour fire barriers.

(ii) Each floor occupied by clients must have access to two remote exits in accordance with Chapter 7, Means of Egress.

(I) Doors in the means of egress must be equipped with hardware that opens with a single motion.

(II) Doors must swing in the direction of egress for occupant loads greater than 50 occupants.

(iii) Every room or space normally subject to client occupancy, other than bathrooms or any room with attended individual clients, must have at least one outside window for emergency rescue or ventilation. Such window must be able to be opened from the inside without the use of tools and provide a clear opening of not less than 20 inches in width, 24 inches in height, and 5.7 sq. ft. (821 sq. in.) in area (minimum width of 20 inches by 41.2 inches high and minimum height of 24 inches by 34.2 inches wide). The bottom of the opening must be not more than 44 inches (112 cm.) above the floor. In rooms located greater than three stories above grade, the openable clear height, width, and area of the window may be modified to the dimensions necessary for ventilation. Exceptions are:

(I) buildings protected throughout by an approved, supervised automatic sprinkler system in accordance with §9.7;

(II) rooms or spaces with a door leading directly to the outside of the building; or

(III) in existing facilities, rooms smaller than 250 square feet.

(iv) Interior finish in stairways, corridors, and lobbies must be Class A. All other walls and ceilings must be Class A or Class B interior finish in accordance with Life Safety Code, NFPA 101, 2000 edition, §10.2.3. Flame spread is the rate of fire travel along the surface of a material. (This is different from other requirements for time-rated "burn through" resistance ratings such as one-hour rated.) Flame spread ratings are Class A (0-25), Class B (26-75), and Class C (76-200).

(v) Floor finish materials within corridors and exits must be Class I or Class II in accordance with §10.2.7 in new construction or new installations of flooring. Replacement or newly installed floor finish materials must be Class I or II. Existing floor finish materials in good condition may remain in use in accordance with §10.2.

(vi) A smoke detection system must be installed in accordance with §9.6 with placement of detectors in each story in front of the doors to the stairways and in the corridors of all floors occupied by the day-care occupancy. Detectors also must be installed in lounges, recreation areas, dining areas, and sleeping rooms in the center

(vii) Fire department notification must be accomplished in accordance with §9.6.4, except in day-care centers with not more than 100 clients.

(3) Exceptions to the Life Safety Code, NFPA 101, 2000 edition, chapters 16 or 17, are as follows.

(A) All required smoke detectors must be powered by the facility electrical system and be interconnected with the fire alarm system.

(B) Reference to apartment buildings in §16.1.2 or §17.1.2 must be deleted. Any floor above or below the floor of exit discharge that is used by semi-ambulatory clients, or those whose disability prevents them from taking appropriate action for self-preservation in emergencies, must be provided with smoke compartmentation.

(C) Emergency lighting is not required for means of egress if the facility operation is during daylight hours and if natural light, direct or borrowed, is provided so that the means of egress is usable in emergencies.

(D) Special protective electrical receptacle covers are not required.

(E) NFPA 96, Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations, is not applicable if the facility has residential-type cooking equipment.

(F) Public corridors must not be used for return or supply air systems.

(G) Residential-type heating units or heating units designed for attic installations must not be considered to be units requiring furnace room construction as specified under §16.3.2.1 or §17.3.2.1.

(H) New additions or remodeling must be as required for new construction in accordance with paragraph (4) of this subsection.

(I) Sprinkler system for a janitor's closet as specified under §16.3.2.1 or §17.3.2.1 is not required unless the building has a complete NFPA 13 system.

(4) For new construction, DADS requires conformance to the following codes, except that DADS may accept other nationally recognized codes that are locally enforced.

(A) If the municipality has a building code and a plumbing code, then those codes govern in those areas of construction. Where local codes or ordinances are applicable, the most restrictive parts concerning the same subject item apply unless otherwise determined by the authority having jurisdiction for local codes and the licensing agency.

(B) In the absence of local municipal codes or ordinances, nationally recognized codes must be used, such as the International Building Code and the compatible International Codes published by the International Code Council. These nationally recognized codes, when used, must all be publications of the same group or organization to assure the intended continuity.

(C) Heating, ventilating, and air-conditioning (HVAC) systems must be designed and installed in accordance with NFPA 90A and NFPA 90B, as applicable, and the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE), except as may be modified in this subchapter. Buildings required to meet NFPA 90A must have automatic shutdown upon initiation of the fire alarm system, in accordance with NFPA 90A, §4.4.

(D) Electrical and illumination systems must be designed and installed in accordance with NFPA 70 and the *Lighting Handbook* of the Illuminating Engineering Society (IES) of North America, except as may be modified in this subchapter.

(i) Minimum illumination must be 20 foot candles in the toilets, bathing, and general use areas, such as living areas, dining areas, corridors, and lobbies.

(ii) Minimum illumination must be 50 foot candles in the kitchen, medication or food preparation areas, and activity areas for handicrafts or reading.

(5) An existing building either occupied as an adult day care facility at the time of initial inspection by DADS, or converted to occupancy as an adult day care facility, must meet all local requirements pertaining to the building for that occupancy. DADS may require the facility sponsor or licensee to submit evidence that local requirements are satisfied.

(6) Adult day care facilities must be of recognized permanent type construction as distinguished from movable buildings or construction. Buildings must be structurally sound with regard to actual or expected dead, live, and wind loads. DADS may require submission of evidence to this effect. Foundations must be permanent, structurally sound for local soil conditions, and in good repair. A letter from a registered professional engineer may be required as validation of a permanent and structurally sound foundation.

(7) The walking surface in a facility and at the exit discharge must be consistent, nominally level, and without abrupt changes in elevation, trip hazards, or gaps. Floor surfaces may be on different elevations if connected with ramps or steps in accordance with the Life Safety Code, NFPA 101, 2000 edition, means of egress chapter.

(8) DADS will consider a written request from the facility for a waiver of requirements which, if strictly applied, would clearly be impractical in DADS' judgment for existing buildings and structures that have been converted to adult day care occupancy. Any of these modifications will be allowed only to the extent that reasonable life safety against the hazards of fire, explosion, structural, or other building failure and panic are provided and maintained.

(c) Personal safety.

(1) Fire safety.

(A) The facility must maintain an onsite copy of the annual fire marshal inspection report by the local fire marshal.

(B) Storage items must be neatly arranged and placed in the facility to minimize fire hazard. Gasoline, volatile materials, paint, and similar products must not be stored in the building housing clients unless approved by the local fire marshal. Accumulations of extraneous material and refuse are not permitted in the facility.

(C) The building must be kept in good repair.

(D) The facility's electrical, mechanical, heating, and cooling systems must be maintained in a safe manner and in working order. DADS may require the facility sponsor or licensee to submit evidence to this effect, consisting of a report from the fire marshal or city or county building official having jurisdiction or a report from a registered professional engineer.

(E) Electrical appliances, devices, and lamps used in the facility must be used in a manner that prevents overloaded circuits.

(F) If the facility uses extension cords in excess of six feet, they must be shielded or protected.

(G) Smoking regulations must be established and enforced by the facility and conspicuously posted in the facility.

(i) All smoking must be supervised.

(ii) The facility must prohibit smoking in any room, ward, or compartment where flammable liquids, combustible gas, or oxygen are used or stored and in any other hazardous location. The facility must post a "No Smoking" sign in these areas.

(iii) Ashtrays of noncombustible material and safe design must be provided in all areas where smoking is permitted.

(iv) Metal containers of substantial gauge or any UL- or FM-approved containers with self-closing cover devices into which ashtrays can be emptied must be provided in all areas where smoking is permitted.

(H) The facility must have an emergency fire lane for access of fire apparatus if required by local authorities.

(I) An initial pressure test of facility gas lines from the meter must be provided. Additional pressure tests are required when the facility has major renovations or additions during which the gas service is interrupted. Testing must be performed by a person licensed with the State Board of Plumbing Examiners.

(J) The facility must have all gas heating systems checked for proper operation and safety before the heating season by a person licensed by the Texas Department of Licensing and Regulation to perform maintenance work on gas-fired equipment. Any unsatisfactory conditions must be corrected promptly.

(K) Curtains or draperies in public spaces and individual rooms in which smoking is allowed must be flame retardant.

(L) Portable fire extinguishers of appropriate type and placed in the appropriate location must be provided by the facility in accordance with NFPA 10.

(M) The facility must inspect and maintain portable fire extinguishers.

(i) Portable fire extinguishers must be visually inspected monthly by facility staff. Facility staff conducting the monthly visual inspection must assure portable fire extinguishers are protected from damage, kept on their mounting brackets or in cabinets at all times, and kept in proper condition and working order.

(ii) Portable fire extinguishers must be inspected and maintained at least once every 12 months in accordance with NFPA 10 by a person licensed by the State Fire Marshal's office, to include hydrostatic testing as recommended by the manufacturer.

(iii) A record of all fire extinguisher inspections and maintenance performed must be kept onsite by the facility.

(N) Garbage, waste, or trash containers provided for kitchens, janitor closets, laundries, mechanical or boiler rooms, general storage, and similar places must be made of metal or any UL- or FM-approved material, having a close fitting cover. Disposable plastic liners may be used in these containers for sanitation.

(2) General requirements.

(A) All exterior site conditions must be designed, constructed, and maintained in the interest of clients' safety. Newly constructed ramps must not exceed 1:12 slope. Ramps, walks, and steps must be of slip-resistive texture and be smooth and uniform, without irregularities. Guard rails, fences, and hand rails must be provided as required.

(B) All stairways must have substantial hand rails properly secured.

(C) Tubs or showers for client use must have non-slip bottoms or floor surfaces, either built in or applied to the surface.

(D) Elevators for client use must be in safe operating condition.

(E) An adequate supply of hot water must be provided. The hot water system connected to all client-use fixtures must deliver warm water no hotter than 120 degrees Fahrenheit at the fixture. Hot water for other sanitary usages must be provided at the temperatures required for the appliance or fixture served, or for the operation involved.

(F) There must be no occupancies or activities adversely affecting the safety of the clients in the buildings or on the premises of the facility.

(G) Licensure capacity will be calculated at 40 square feet per client. This space may not include the kitchen/food service area, rest rooms, bath areas, office, corridors, stairways, storage areas, and outdoor space. Facilities licensed before October 1, 2000, will be allowed to meet the requirements in effect before October 1, 2000, of 35/50 square feet for ambulatory and semi-ambulatory clients. If a facility licensed before October 1, 2000, chooses to increase its capacity, changes ownership, or relocates, the facility will be required to meet the current standards for usable space, outdoor area, and rooms for privacy.

(H) An office area must be provided in a central location to record and maintain files for each client.

(I) An area for rest, other than the treatment and/or exam room, must be provided with a sufficient number of reclining lounge chairs or beds to accommodate the needs of clients.

(J) The facility must provide a separate room or rooms with beds and with walls from floor to ceiling for those clients who prefer privacy. Facilities licensed on or after May 1, 1999, must ensure that the room(s) with beds provide space for a minimum 5% of the licensed capacity. The usable space in the room(s) must provide not less than 80 square feet per bed for a one-bed room and not less than 60 square feet per bed for multiple-bed rooms. A bedroom shall be not less than eight feet in its smallest dimension, unless otherwise approved by DADS.

(K) The facility must have at least one room available as a treatment or examination room for use by the nursing staff or the client's physician. The client may not be treated or examined in an area other than the treatment room.

(L) The facility must have a safe, secure, and suitable outdoor recreation or relaxation area for clients. This area must be connected to, be a part of, be controlled by, and be directly accessible from the facility. This area must be enclosed by a wall or a fence or located in a courtyard and supervised by staff to prevent wandering and large enough to conduct outdoor activities. A chain-link fence must provide protection on top to prevent injury from wire points. This area must be suitably furnished. A minimum of 20% of the required outdoor space must be shaded. The required outdoor space for facilities licensed on or after May 1, 1999 is:

- (i) 400 square feet for facilities up to 59 clients;
- (ii) 600 square feet for facilities up to 99 clients; and
- (iii) 800 square feet for facilities with 100 or more

clients.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 11, 2011.
TRD-201102620

Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: August 1, 2011
Proposal publication date: April 1, 2011
For further information, please call: (512) 438-3734

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SUBCHAPTER D. LICENSURE AND PROGRAM REQUIREMENTS

40 TAC §98.64

The new section is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commis-

sioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Human Resource Code, Chapter 103, which provides DADS with the authority to license and regulate adult day care facilities.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 11, 2011.

TRD-201102621

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Effective date: August 1, 2011

Proposal publication date: April 1, 2011

For further information, please call: (512) 438-3734

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Department of Banking

Title 7, Part 2

On behalf of the Finance Commission of Texas, the Texas Department of Banking files this notice of intention to review and consider for readoption, revision, or repeal, the following chapter of Texas Administrative Code, Title 7, in its entirety:

Chapter 17 (Trust Company Regulation), comprised of Subchapter A (§§17.2 - 17.4); and Subchapter B (§§17.21 - 17.23).

The review is conducted pursuant to Government Code, §2001.039. Comments regarding the review of this chapter, and whether the reasons for initially adopting the sections under review continue to exist, will be accepted for 30 days following the publication of this notice in the *Texas Register*.

Any questions or written comments pertaining to this notice of intention to review should be directed to Kaylene Ray, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705, or e-mailed to legal@dob.texas.gov.

Any proposed changes to these sections as a result of the rule review will be published as proposed rules in the *Texas Register*. Proposed rules are subject to public comment for a reasonable period prior to final adoption by the commission.

TRD-201102634

A. Kaylene Ray

General Counsel

Texas Department of Banking

Filed: July 11, 2011



On behalf of the Finance Commission of Texas, the Texas Department of Banking files this notice of intention to review and consider for readoption, revision, or repeal, the following chapter of Texas Administrative Code, Title 7, in its entirety:

Chapter 19 (Trust Company Loans and Investments), comprised of Subchapter A (§19.1); Subchapter B (§19.21 and §19.22); and Subchapter C (§19.51).

The review is conducted pursuant to Government Code, §2001.039. Comments regarding the review of this chapter, and whether the reasons for initially adopting the sections under review continue to exist, will be accepted for 30 days following the publication of this notice in the *Texas Register*.

Any questions or written comments pertaining to this notice of intention to review should be directed to Kaylene Ray, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705, or e-mailed to legal@dob.texas.gov.

Any proposed changes to these sections as a result of the rule review will be published as proposed rules in the *Texas Register*. Proposed rules are subject to public comment for a reasonable period prior to final adoption by the commission.

TRD-201102633

A. Kaylene Ray

General Counsel

Texas Department of Banking

Filed: July 11, 2011



Texas Department of Insurance, Division of Workers' Compensation

Title 28, Part 2

The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) will review and consider for readoption, revision, or repeal all sections of the following chapter of Title 28, Part 2 of the Texas Administrative Code, in accordance with the Texas Government Code §2001.039: Chapter 114, Self-Insurance.

§114.1. Purpose.

§114.2. Definitions.

§114.3. Application Form and Financial Information Requirements.

§114.4. Security Deposit Requirements.

§114.5. Excess Insurance Requirements.

§114.6. Safety Program Requirements.

§114.7. Certification Process.

§114.8. Refusal To Certify an Employer.

§114.9. Required Safety Program Inspections.

§114.10. Claims Contractor Requirements.

§114.11. Audit Program.

§114.12. Required Reporting.

§114.13. Required Notices to the Director.

§114.14. Impaired Employer.

§114.15. Revocation or Suspension of Certificate of Authority To Self-Insure.

The Division will consider whether the reasons for initially adopting these rules continue to exist and whether these rules should be repealed, readopted, or readopted with amendments. Any repeals or necessary amendments identified during the review of these rules will be proposed and published in the *Texas Register* in accordance with the Administrative Procedure Act, Texas Government Code Chapter 2001.

To be considered, written comments relating to whether these rules should be repealed, readopted, or readopted with amendments must be submitted by 5:00 p.m. CST August 22, 2011. Comments may be submitted by email at rulecomments@tdi.state.tx.us or by mailing or delivering your comments to Maria Jimenez, Legal Services, MS-4D, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645.

Comments should clearly specify the particular section of the rule to which they apply. Comments should include proposed alternative language as appropriate. General comments should be designated as such.

TRD-201102607

Dirk Johnson

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Filed: July 8, 2011



The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) will review and consider for re adoption, revision, or repeal all sections of the following chapter of Title 28, Part 2 of the Texas Administrative Code, in accordance with the Texas Government Code §2001.039: Chapter 148, Hearings Conducted by the State Office of Administrative Hearings.

§148.1. Definitions.

§148.2. Scope and Applicability.

§148.3. Requesting a Hearing.

§148.4. Correction of Clerical Error in Medical Review Division Decisions or Orders Absent a Request for Hearing.

§148.5. Notice of Hearing.

§148.6. Venue.

§148.7. Representation.

§148.8. Withdrawal of Hearing Request.

§148.9. Informal Disposition.

§148.10. Hearings Subpoenas to Compel Attendance and Subpoenas Duces Tecum.

§148.11. Commissions to Compel Attendance for Deposition.

§148.12. Ex Parte Communications.

§148.13. Recording the Hearing.

§148.14. Burden of Proof.

§148.15. Final Decision by the ALJ.

§148.16. Proposal for Decision by the ALJ.

§148.17. Special Provisions for Administrative Penalties.

§148.18. Record of the Hearing.

§148.19. Transcript or Duplicate of the Hearing Audiotape or Videotape.

§148.20. Reimbursement, Travel Expenses, and Fees for Witness and Deponents.

§148.21. Expenses to be Paid by Party Seeking Judicial Review.

§148.22. Failure to Appear or Comply with Order or Decision, Administrative Violation.

§148.23. Commission Enforcement of Orders.

The Division will consider whether the reasons for initially adopting these rules continue to exist and whether these rules should be repealed, readopted, or readopted with amendments. Any repeals or necessary amendments identified during the review of these rules will be proposed and published in the *Texas Register* in accordance with the Administrative Procedure Act, Texas Government Code Chapter 2001.

To be considered, written comments relating to whether these rules should be repealed, readopted or readopted with amendments must be submitted by 5:00 p.m. CST August 22, 2011. Comments may be submitted by email at rulecomments@tdi.state.tx.us or by mailing or delivering your comments to Maria Jimenez, Legal Services, MS-4D, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645.

Comments should clearly specify the particular section of the rule to which they apply. Comments should include proposed alternative language as appropriated. General comments should be designated as such.

TRD-201102605

Dirk Johnson

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Filed: July 8, 2011



The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) will review and consider for re adoption, revision, or repeal all sections of the following chapter of Title 28, Part 2 of the Texas Administrative Code, in accordance with the Texas Government Code §2001.039: Chapter 149, Memorandum of Understanding with the State Office of Administrative Hearings.

§149.1. Definitions.

§149.2. General Statement.

§149.3. Referral of Contested Case to SOAH.

§149.4. Notice of Hearing.

§149.5. Hearings.

§149.6. Confidentiality of Records.

§149.7. Action Upon Withdrawal of Decision.

§149.8. Final Orders in Accordance with the Act, §§411.049, 413.031, 413.055, and 415.034.

§149.9. Proposals for Decision in Accordance with the Act, §§402.072, 407.046, and 408.0231.

§149.10. Custody of the Hearing Record.

The Division will consider whether the reasons for initially adopting these rules continue to exist and whether these rules should be repealed, readopted, or readopted with amendments. Any repeals or necessary amendments identified during the review of these rules will be pro-

posed and published in the *Texas Register* in accordance with the Administrative Procedure Act, Texas Government Code Chapter 2001.

To be considered, written comments relating to whether these rules should be repealed, readopted, or readopted with amendments must be submitted by 5:00 p.m. CST August 22, 2011. Comments may be submitted by email at rulecomments@tdi.state.tx.us or by mailing or delivering your comments to Maria Jimenez, Legal Services, MS-4D, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645.

Comments should clearly specify the particular section of the rule to which they apply. Comments should include proposed alternative language as appropriate. General comments should be designated as such.

TRD-201102606

Dirk Johnson

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Filed: July 8, 2011



Adopted Rule Reviews

Texas Department of Insurance, Division of Workers' Compensation

Title 28, Part 2

The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) has completed its review required by the Texas Government Code §2001.039 of the following chapter of the Texas Administrative Code, Title 28, Part 2: Chapter 63, concerning Promptness of First Payment. The reviewed sections in this chapter are subsequently referred to collectively in this Notice of Adopted Review as "the sections."

The notice of proposed rule review was published in the April 15, 2011, issue of the *Texas Register* (36 TexReg 2468). As provided in this notice, the Division reviewed and considered the sections for readoption, revision, or repeal.

The Division considered whether the reasons for adoption of the sections continue to exist. The Division also considered whether the sections were obsolete or were consistent with current procedures and practices of the Division.

As a result of the review, the Division has determined that the reason for adoption of the following section continues to exist. Therefore, the Division readopts the following section. If the Division determines in the future that the section should be revised or repealed, the repeal or revisions of the section will be accomplished in accordance with the Administrative Procedure Act.

§63.10. Sanctions of Late Payment.

As a result of the review, the Division has determined that the reason for adoption of the following section does not continue to exist and therefore this section is not readopted. This rule will be repealed at a later date in accordance with the Administrative Act.

§63.5. Quarterly Report.

The Division received no written comments regarding the review of its rules.

This concludes the Division's review of Chapter 63. The completion of the review of this chapter concludes the rule review process.

TRD-201102649

Dirk Johnson

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Filed: July 12, 2011



The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) has completed its review required by the Texas Government Code §2001.039 of the following chapter of the Texas Administrative Code, Title 28, Part 2: Chapter 110, Required Notices of Coverage. The reviewed sections in this chapter are subsequently referred to collectively in this Notice of Adoption Review as "the sections."

The notice of proposed rule review was published in the May 6, 2011, issue of the *Texas Register* (36 TexReg 3001). As provided in this notice, the Division reviewed and considered the sections for readoption, revision or repeal.

The Division considered whether the reasons for adoption of the sections continue to exist. The Division also considered whether the sections were obsolete or were consistent with current procedures and practices of the Division.

The Division has determined that the reasons for adopting the following sections continue to exist and the sections are retained in their present form. Any revisions in the future will be accomplished in accordance with the Administrative Procedure Act.

Subchapter A - Carrier Notices.

§110.1. Requirements for Notifying the Commission of Insurance Coverage.

Subchapter B - Employer Notices.

§110.101. Covered and Non-Covered Employer Notices to Employees.

§110.108. Employer Notice Regarding Work-Related Exposure to Communicable Disease/HIV: Posting Requirements; Payments for Tests.

§110.110. Reporting Requirements for Building or Construction Projects for Governmental Entities.

The Division received no written comments regarding the review of its rules.

This concludes and completes the Division's review of Chapter 110. The completion of the review of this chapter concludes the rule review process.

TRD-201102604

Dirk Johnson

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Filed: July 8, 2011



TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §25.243(d)(1)

$$\frac{[(((DIC_C - DIC_{RC}) * ROR_{AT}) + (DEPR_C - DEPR_{RC}) + (FIT_C - FIT_{RC}) + (OT_C - OT_{RC})) * ALLOC_{CLASS} - (((BD_{C-CLASS} - BD_{RC-CLASS}) / BD_{RC-CLASS}) * (FIT_{RC-CLASS} + OT_{RC-CLASS} + DEPR_{RC-CLASS} + ROIC_{RC-CLASS}))]}{BD_{C-CLASS}}$$

Where:

DIC_C = Current Net Distribution Invested Capital.

DIC_{RC} = Net Distribution Invested Capital from the last comprehensive base-rate proceeding.

ROR_{AT} = After-tax Rate of Return as defined in paragraph (2) of this subsection.

$DEPR_C$ = Current Depreciation Expense, as related to Current Net Distribution Invested Capital, calculated using the currently approved depreciation rates.

$DEPR_{RC}$ = Depreciation Expense, as related to Net Distribution Invested Capital, from last comprehensive base-rate proceeding.

FIT_C = Current Federal Income Tax, as related to Current Net Distribution Invested Capital, including the change in federal income taxes related to the change in return on rate base and synchronization of interest associated with the change in rate base resulting from additions to and retirements of distribution plant as used to compute Net Distribution Invested Capital.

FIT_{RC} = Federal Income Tax, as related to Net Distribution Invested Capital from last comprehensive base-rate proceeding.

OT_C = Current Other Taxes (taxes other than income taxes and taxes associated with the return on rate base), as related to Current Net Distribution Invested Capital, calculated using current tax rates and the methodology from the last comprehensive base-rate proceeding, and does not include municipal franchise fees.

OT_{RC} = Other Taxes, as related to Net Distribution Invested Capital from last comprehensive base-rate proceeding, and does not include municipal franchise fees.

$ALLOC_{CLASS}$ = Rate Class Allocation Factor from last comprehensive base-rate proceeding, calculated as: total distribution net plant allocated to rate class, divided by total net distribution plant. For situations in which data from the last comprehensive base-rate proceeding are not available to perform the described calculation, the Rate Class Allocation Factor shall be calculated as the total distribution revenue requirement allocated to the rate class (less any identifiable amounts explicitly unrelated to Distribution Invested Capital) divided by the total distribution revenue requirement (less any identifiable amounts explicitly unrelated to Distribution Invested Capital) for all classes as approved by the commission in the electric utility's last comprehensive base-rate case.

$BD_{C-CLASS}$ = Rate Class Billing Determinants (weather-normalized and adjusted to reflect the number of customers at the end of the period) for the 12 months ending on the date used for purposes of determining the Current Net Distribution Invested Capital. For customer classes billed primarily on the basis of kilowatt-hour billing determinants, the DCRF shall be calculated using kilowatt-hour billing determinants. For customer classes billed primarily on the basis of demand billing determinants, the DCRF shall be calculated using demand billing determinants.

$BD_{RC-CLASS}$ = Billing Determinants (weather-normalized and adjusted to reflect the number of customers at the end of the period) for the rate class used to set rates in the last comprehensive base-rate proceeding. For customer classes billed primarily on the basis of kilowatt-hour billing determinants, the DCRF shall be calculated using kilowatt-hour billing determinants. For customer classes billed primarily on the basis of demand billing determinants, the DCRF shall be calculated using demand billing determinants.

$FIT_{RC-CLASS}$ = Federal Income Taxes for the rate class, as related to Net Distribution Invested Capital from the last comprehensive base-rate proceeding.

$OT_{RC-CLASS}$ = Other Taxes for the rate class, as related to Net Distribution Invested Capital from the last comprehensive base-rate proceeding, and does not include municipal franchise fees.

$DEPR_{RC-CLASS}$ = Depreciation Expense for the rate class, as related to Net Distribution Invested Capital from the last comprehensive base-rate proceeding.

$ROIC_{RC-CLASS}$ = Return on Net Distribution Invested Capital for the rate class from the last comprehensive base-rate proceeding.

Figure: 31 TAC §65.331(e)

Salamanders

Three-toed Amphiuma (*Amphiuma tridactylum*)
Gulf Coast Waterdog (*Necturus beyeri*)
Lesser Siren (*Siren intermedia*)
Spotted Salamander (*Ambystoma maculatum*)
Marbled Salamander (*Ambystoma opacum*)
Mole Salamander (*Ambystoma talpoideum*)
Small-mouthed Salamander (*Ambystoma texanum*)
Southern Dusky Salamander (*Desmognathus auriculatus*)
Salado Salamander (*Eurycea chisholmensis*)
Texas Salamander (*Eurycea neotenes*)
Dwarf Salamander (*Eurycea quadridigitata*)
Jollyville Plateau Salamander (*Eurycea tonkawae*)
Valdina Farms Salamander (*Eurycea troglodytes*)
Western Slimy Salamander (*Plethodon albagula*)
Southern Red-backed Salamander (*Plethodon serratus*)
Eastern Newt (*Notophthalmus viridescens*)

Frogs and Toads

American Toad (*Bufo americanus*)
Cane Toad (*Bufo marinus*)
Cricket Frog (*Acris crepitans*)
Canyon Treefrog (*Hyla arenicolor*)
Cope's Gray Treefrog (*Hyla chrysoscelis*)
Squirrel Treefrog (*Hyla squirella*)
Gray Treefrog (*Hyla versicolor*)
Spotted Chorus Frog (*Pseudacris clarkii*)
Spring Peeper (*Pseudacris crucifer*)
Southeastern Chorus Frog (*Pseudacris feriarum*)
Strecker's Chorus Frog (*Pseudacris streckeri*)
Barking Frog (*Eleutherodactylus augusti*)
Rio Grande Chirping Frog (*Eleutherodactylus cystignathoides*)

Spotted Chirping Frog (*Eleutherodactylus guttilatus*)
Cliff Chirping Frog (*Eleutherodactylus marnockii*)
Eastern Narrow-mouthed Toad (*Gastrophryne carolinensis*)
Great Plains Narrow-mouthed Toad (*Gastrophryne olivacea*)
Hurter's Spadefoot (*Scaphiopus hurterii*)
Crawfish Frog (*Rana areolata*)
Rio Grande Leopard Frog (*Rana berlandieri*)
Plains Leopard Frog (*Rana blairi*)
Green Frog (*Rana clamitans*)
Pig Frog (*Rana grylio*)
Pickerel Frog (*Rana palustris*)
Southern Leopard Frog (*Rana sphenoccephala*)

Turtles

Painted Turtle (*Chrysemys picta*)
Chicken Turtle (*Deirochelys reticularia*)
Mississippi Map Turtle (*Graptemys kohni*)
Ouachita Map Turtle (*Graptemys ouachitensis*)
Texas Map Turtle (*Graptemys versa*)
River Cooter (*Pseudemys concinna*)
Rio Grande Cooter (*Pseudemys gorzugi*)
Texas River Cooter (*Pseudemys texana*)
Eastern Box Turtle (*Terrapene carolina*)
Ornate Box Turtle (*Terrapene ornata*)
Big Bend Slider (*Trachemys gaigeae*)
Yellow Mud Turtle (*Kinosternon flavescens*)
Eastern Mud Turtle (*Kinosternon subrubrum*)
Razor-backed Musk Turtle (*Sternotherus carinatus*)
Stinkpot (*Sternotherus odoratus*)

Lizards

Slender Glass Lizard (*Ophisaurus attenuatus*)
Long-nosed Leopard Lizard (*Gambelia wislizenii*)
Spot-tailed Earless Lizard (*Holbrookia lacerata*)

Keeled Earless Lizard (*Holbrookia propinqua*)
Round-tailed Horned Lizard (*Phrynosoma modestum*)
Dunes Sagebrush Lizard (*Sceloporus arenicolus*)
Blue Spiny Lizard (*Sceloporus cyanogenys*)
Graphic Spiny Lizard (*Sceloporus grammicus*)
Desert Spiny Lizard (*Sceloporus magister*)
Canyon Lizard (*Sceloporus merriami*)
Texas Spiny Lizard (*Sceloporus olivaceus*)
Rose-bellied Lizard (*Sceloporus variabilis*)
Coal Skink (*Eumeces anthracinus*)
Broad-headed Skink (*Eumeces laticeps*)
Many-lined Skink (*Eumeces multivirgatus*)
Prairie Skink (*Eumeces septentrionalis*)
Four-lined Skink (*Eumeces tetragrammus*)
Gray Checkered Whiptail (*Aspidocelis dixonī*)
Little Striped Whiptail (*Aspidocelis inornata*)
Laredo Striped Whiptail (*Aspidocelis laredoensis*)
New Mexico Whiptail (*Aspidocelis neomexicana*)
Mexican Plateau Spotted Whiptail (*Aspidocelis septemvittata*)
Desert Grassland Whiptail (*Aspidocelis uniparens*)

Snakes

New Mexico Blind Snake (*Leptotyphlops dissectus*)
Western Blind Snake (*Leptotyphlops humilis*)
Western Wormsnake (*Carphophis vermis*)
Ring-necked Snake (*Diadophis punctatus*)
Red-bellied Mudsake (*Farancia abacura*)
Tamaulipan Hook-nosed Snake (*Ficimia streckeri*)
Chihuahuan Hooked-nosed Snake (*Gyalopion canum*)
Saltmarsh Snake (*Nerodia clarkī*)
Mississippi Green Watersnake (*Nerodia cyclopion*)
Graham's Crayfish Snake (*Regina grahamiī*)
Glossy Crayfish Snake (*Regina rigida*)
Red-bellied Snake (*Storeria occipitomaculata*)

Mexican Black-headed Snake (*Tantilla atriceps*)
Plains Gartersnake (*Thamnophis radix*)
Common Gartersnake (*Thamnophis sirtalis*)
Smooth Earthsnake (*Virginia valeriae*)

Mammals

Southern Short-tailed Shrew (*Blarina carolinensis*)
Elliot's Short-tailed Shrew (*Blarina hylophaga*)
Least Shrew (*Cryptotis parva*)
Desert Shrew (*Notiosorex crawfordi*)
Eastern Mole (*Scalopus aquaticus*)
Mexican Ground Squirrel (*Spermophilus mexicanus*)
Gray-footed Chipmunk (*Tamias canipes*)
Yellow-faced Pocket Gopher (*Cratogeomys castanops*)
Desert Pocket Gopher (*Geomys arenarius*)
Attwater's Pocket Gopher (*Geomys attwateri*)
Baird's Pocket Gopher (*Geomys breviceps*)
Plains Pocket Gopher (*Geomys bursarius*)
Jones' Pocket Gopher (*Geomys knoxjonesi*)
Texas Pocket Gopher (*Geomys personatus*)
Llano Pocket Gopher (*Geomys texensis*)
Botta's Pocket Gopher (*Thomomys bottae*)
Northern Pygmy Mouse (*Baiomys taylori*)
Hispid Pocket Mouse (*Chaetodipus hispidus*)
Rock Pocket Mouse (*Chaetodipus intermedius*)
Nelson's Pocket Mouse (*Chaetodipus nelsoni*)
Desert Pocket Mouse (*Chaetodipus penicillatus*)
Gulf Coast Kangaroo Rat (*Dipodomys compactus*)
Ord's Kangaroo Rat (*Dipodomys ordii*)
Banner-tailed Kangaroo Rat (*Dipodomys spectabilis*)
Mexican Spiny Pocket Mouse (*Liomys irroratus*)
Mexican Vole (*Microtus mexicanus*)
Prairie Vole (*Microtus ochrogaster*)
Woodland Vole (*Microtus pinetorum*)

White-throated Woodrat (*Neotoma albigula*)
Eastern Woodrat (*Neotoma floridana*)
Golden Mouse (*Ochrotomys nuttalli*)
Mearns' Grasshopper Mouse (*Onychomys arenicola*)
Northern Grasshopper Mouse (*Onychomys leucogaster*)
Marsh Rice Rat (*Oryzomys palustris*)
Plains Pocket Mouse (*Perognathus flavescens*)
Silky Pocket Mouse (*Perognathus flavus*)
Merriam's Pocket Mouse (*Perognathus merriami*)
Texas Mouse (*Peromyscus attwateri*)
Brush Mouse (*Peromyscus boylii*)
Cactus Mouse (*Peromyscus eremicus*)
Cotton Mouse (*Peromyscus gossypinus*)
White-footed Mouse (*Peromyscus leucopus*)
Deer Mouse (*Peromyscus maniculatus*)
Northern Rock Mouse (*Peromyscus nasutus*)
White-ankled Mouse (*Peromyscus pectoralis*)
Piñon Mouse (*Peromyscus truei*)
Fulvous Harvest Mouse (*Reithrodontomys fulvescens*)
Eastern Harvest Mouse (*Reithrodontomys humulis*)
Western Harvest Mouse (*Reithrodontomys megalotis*)
Plains Harvest Mouse (*Reithrodontomys montanus*)
Mexican Woodrat (*Neotoma mexicana*)
Southern Plains Woodrat (*Neotoma micropus*)
Tawny-bellied Cotton Rat (*Sigmodon fulviventer*)
Hispid Cotton Rat (*Sigmodon hispidus*)
Yellow-nosed Cotton Rat (*Sigmodon ochrognathus*)
Porcupine (*Erethizon dorsatum*)
Long-tailed Weasel (*Mustela frenata*)

Figure: 40 TAC §97.602(h)(2)(D)

SEVERITY LEVEL A VIOLATIONS \$100 - \$250 per violation	
Rule Cite	Subject Matter
§97.212	Prohibiting material alteration of a license.
§97.213(a)-(b) separate penalties	Agency relocation.
§97.214(a)-(b) separate penalties	Notification procedures for reporting a change in agency telephone number and agency operating hours.
§97.216(a)	Change in agency certification or accreditation status.
§97.217(b)(1)-(2) separate penalties	Procedures for notifying DADS of a voluntary suspension of operations.
§97.218(a)-(b) separate penalties	Notice of agency organizational changes and submitting criminal history check consent forms.
§97.219	Procedure for adding or deleting a category of service to the agency's license.
§97.220(a)(2)	Providing services only within an agency's licensed service area.
§97.220(c)	Providing a written notification of an expansion of an agency's licensed service area.
§97.220(d)	Providing written notification of a reduction of an agency's licensed service area.
§97.242(a)-(b) separate penalties	Preparing and maintaining a current written description of the agency's organizational structure.
§97.243(b)(1)(A)-(B) and (D)-(G) separate penalties	Responsibilities of the administrator.
§97.243(b)(3)	Requirement that the administrator designate in writing an agency employee who must provide DADS surveyors entry to the agency.
§97.243(d)	Adoption of a written policy for the supervision of branch offices or alternate delivery sites, if established.
§97.244(b)(1)-(5) separate penalties	Conditions of the agency administrator and alternate administrator.
§97.245(a)-(b)(1)-(10) separate penalties	Adoption and enforcement of written policies governing all personnel staffed by the agency.
§97.246(a)(1)-(6)(A)-(B) and (b) separate penalties	An agency's personnel records and content of such records.
§97.247(a)(4) and (b)(4) separate penalties	Providing unlicensed employees and volunteers with written information about the employee misconduct registry.
§97.247(c)	Documentation of compliance with verifying the employability and use of unlicensed applicants, employees, and volunteers.
§97.248(a)-(b)(1)-(4) separate penalties	The use of volunteers in an agency.
§97.249(b)	Adoption of a written policy for the reporting of alleged acts of abuse, neglect, and exploitation of clients.
§97.250(a)	Adoption of a written policy covering procedures for investigating known and alleged acts of abuse, neglect, and exploitation and other complaints.

SEVERITY LEVEL A VIOLATIONS \$100 - \$250 per violation	
Rule Cite	Subject Matter
§97.250(e)	Prohibiting an agency from retaliating against a person for filing a complaint, presenting a grievance, or providing, in good faith, information about the services provided by the agency.
§97.251	Adoption of a written policy for ensuring that all professional disciplines comply with their respective professional practice acts or title acts for reporting and peer review.
§97.253	Adoption of a written policy describing whether an agency will conduct drug testing of employees that describes the method and provides a copy of the policy.
§97.254	Adoption of a written policy for ensuring that the agency submits accurate billings and insurance claims.
§97.255	Adoption of a written policy for prohibition of illegal remuneration for securing or soliciting clients or patronage.
§97.256(a)	Having a written emergency preparedness and response plan based on a risk assessment.
§97.256(b)(1)-(4) separate penalties	Agency personnel responsible for developing, maintaining and implementing a written emergency preparedness and response plan.
§97.256(c)(1)-(5) separate penalties	Contents of a written emergency preparedness and response plan.
§97.256(d)(1)-(4) separate penalties	Response and recovery phases of a written emergency preparedness and response plan.
§97.256(e)(1)-(2) separate penalties	Procedures to triage clients in a written emergency preparedness and response plan.
§97.256(f)	Procedures in a written emergency preparedness and response plan to identify a client who may need evacuation assistance.
§97.256(g)	Assisting a client as requested to register with 2-1-1 for evacuation assistance.
§97.256(h)(1)-(4) separate penalties	Counseling each client about emergency preparedness.
§97.256(i)	Training agency personnel in their responsibilities in a written emergency preparedness and response plan.
§97.256(j) and (k) separate penalties	Annual review and update of a written emergency preparedness and response plan and annual test of the response phase of the plan.
§97.256(l)	Good faith effort to comply with rules on emergency preparedness planning and implementation.
§97.256(n)	Reproducing client records damaged during a disaster.
§97.256(o)(1)-(2) and (p) separate penalties	Notice of temporary changes due to an emergency or disaster.
§97.259(g)	Prohibiting use of the presurvey conference to meet initial training requirements for a first-time administrator and alternate administrator.
§97.260(d)	Prohibiting use of the pre-survey conference to meeting continuing education requirements for an administrator and alternate administrator.
§97.281(1)-(16) separate penalties	Adoption of a written policy that specifies the agency's client care practices.

SEVERITY LEVEL A VIOLATIONS \$100 - \$250 per violation	
Rule Cite	Subject Matter
§97.282(a)-(b), (d)-(f)(1)-(8), and (g)-(h) separate penalties	Adoption of a written policy governing client conduct and responsibility and client rights.
§97.284	Adoption of a written policy for complying with the Clinical Laboratory Improvement Amendments of 1988, 42 USC, §263a, Certification of Laboratories (CLIA 1988).
§97.285	Adoption of written policies addressing infection control.
§97.285(1)(A)-(C) and (2) separate penalties	Adoption and compliance with a written policy that addresses infection control.
§97.286(a)	Adoption of a written policy for safe handling and disposal of biohazardous waste and materials, if applicable.
§97.288(a)	Adoption of a written policy that all service providers involved in the care of a client effectively coordinate the client's care.
§97.289(c)(2)	Providing written information about the employee misconduct registry to an unlicensed person providing services under arrangement.
§97.289(e)(1)-(3) separate penalties	Documentation of personnel qualifications and for unlicensed staff that provide services under arrangement.
§97.290(a)	Adoption of a written policy for ensuring that backup services are available when an agency employee or contractor is not available to deliver the services.
97.290(a)(1)-(2)	Documentation that a client's designee agreed to provide backup services.
97.290(a)(3)	Not coercing a client to accept backup services.
§97.290(b)	Adoption of a written policy for ensuring that clients are educated in how to access care from the agency or another health care provider after regular business hours.
§97.291	Adoption of a written policy for an agency's written contingency plan.
§97.292(a)	Providing a client or a client's family with a written agreement for services and ensuring appropriate content of the agreement.
97.292(b)	Obtaining acknowledgment that the client received an appropriate written agreement for services and ensuring that the acknowledgment is in the client's record.
§97.293	Maintaining a current list of clients for each category of service licensed.
§97.294	Adoption of a written policy for establishing a time frame for the initiation of care or services.
§97.295(c), (d), and (f) separate penalties	Delivery of written notice and documentation requirements pertaining to an agency's transfer or discharge of a client.
§97.296(a)	Adoption of a written policy that states whether physician delegation will be honored by the agency.
97.296(b)	Information the agency must receive to accept physician delegation.
§97.297	Adoption of a written policy describing protocols and procedures agency staff must follow when receiving physician orders, if applicable.
§97.297(2)	Physician orders received by facsimile.

SEVERITY LEVEL A VIOLATIONS \$100 - \$250 per violation	
Rule Cite	Subject Matter
§97.298	Adoption of a written policy for ensuring compliance with rules adopted by the Texas Board of Nursing in 22 TAC Chapter 224 (Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments) and 22 TAC Chapter 225 (RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions).
§97.299	Adoption of a written policy for ensuring compliance with rules of the Texas Board of Nursing adopted at 22 TAC Chapters 211-226 (Nursing Continuing Education, Licensure, and Practice in the State of Texas).
§97.300(b)	Adoption of a written policy for maintaining a current medication list and a current medication administration record.
§97.300(b)(2)(A)-(B) separate penalties	The administration of medication.
§97.301(a)(1)-(9)(A)-(P) separate penalties	Requirements for maintaining an agency's client records.
§97.301(b)(1)-(3) separate penalties	Adoption and enforcement of a written policy for retention of records.
§97.302	Adoption of a written policy for pronouncement of death if that function is carried out by an agency registered nurse.
§97.321(a)	Branch office compliance with the regulations of its parent agency.
§97.321(c)(1)	Providing services only within a branch office licensed service area.
§97.321(c)(3)	Providing a written notification of an expansion of a branch office service area.
§97.321(c)(4)	Providing written notification of a reduction of a branch office licensed service area.
§97.321(d)(1)-(3) separate penalties	Requirements for branch offices.
§97.321(f)	Requirement prohibiting branch offices from providing services not offered by the parent agency.
§97.322(a)	Alternate delivery site compliance with hospice services standards.
§97.322(b)	An alternate delivery site's independent compliance with §97.403(c), (f)(1), (i), and §97.301.
§97.322(c)(1)	Providing services only within an alternate delivery site licensed service area.
§97.322(c)(3)	Providing a written notification of an expansion of an alternate delivery site service area.
§97.322(c)(4)	Providing written notification of a reduction of an alternate delivery site licensed service area.
§97.322(d)(1)-(3) separate penalties	Requirements for hospices and alternate delivery sites.
§97.401(f)	The use of home health aides.
§97.402(b)	Requirement for implementing a home health aide training and competency program.

SEVERITY LEVEL A VIOLATIONS \$100 - \$250 per violation	
Rule Cite	Subject Matter
§97.403(b)	Restriction on use of the word "hospice" in a title or description of a facility, organization, program, service provider, or services without a license.
§97.403(c)	Adoption of a written policy for the provision of hospice services.
§97.403(e)(3)	Designating which among multiple interdisciplinary teams is responsible for establishing the policies governing day-to-day hospice functions.
§97.403(f)(4)	Retaining responsibility for payment for services.
§97.403(j)	Requirement that reassessment of a client must not reduce core services.
§97.403(k)	Informing the client of the availability of short-term inpatient care.
§97.403(l)	Making and documenting efforts to arrange for visits of clergy and other members of spiritual and religious organizations.
§97.403(u)(4)	Specifying the persons authorized to administer medications in the client's plan of care.
§97.403(w)(2)(A)-(G) separate penalties	Development and documentation of a written emergency preparedness and response plan for a freestanding hospice in the event of a disaster.
§97.403(w)(5)-(6) and (8) separate penalties	Physical plant requirements in a freestanding hospice that provides inpatient care.
§97.403(w)(11)(A)-(D) separate penalties	Providing and supervising meal service in a freestanding hospice that provides inpatient care.
§97.404(e)	Requirement that an agency develops operational policies that are considerate of the principles of individual and family choice and control, functional need, and accessible and flexible services.
§97.404(f)(1)-(3) separate penalties	Additional requirements for maintaining client records in an agency that provides personal assistance services.
§97.404(g)	Adoption of a written policy that addresses the supervision of agency personnel with input from the client or family on the frequency of supervision.
§97.404(g)(1)-(2) separate penalties	Conditions and qualifications for supervision of agency personnel delivering personal assistance services.
§97.405(d)	Requirement for individual personnel files on all physicians.
§97.405(g)	A written transfer agreement with a local hospital for an agency that provides home dialysis services.
§97.405(h)	An agreement with a licensed end stage renal disease facility to provide backup outpatient dialysis services.
§97.405(j)	Ensuring that names of clients awaiting a donor transplant are entered in the recipient registry program.
§97.405(s)(1) and (4)- (7) separate penalties	Additional requirements for maintaining client records in an agency that provides home dialysis services.
§97.405(v)	Development of a written preventive maintenance program for home dialysis equipment.
§97.405(v)(1)(B)	Maintaining written evidence of preventive maintenance and equipment repairs.

SEVERITY LEVEL A VIOLATIONS \$100 - \$250 per violation	
Rule Cite	Subject Matter
§97.405(z)	Adoption of policies and procedures for medical emergencies and emergencies resulting from a disaster required of an agency that provides home dialysis services.
§97.406(1)	Adoption of a written policy for the provision of psychoactive treatments, if applicable.
§97.521(a)	Requirement for initiation of services for receiving an initial license.
§97.523(a)	Staff availability for the initial survey.
§97.523(b)	Staff availability for survey other than the initial survey.
§97.523(e)	Providing surveyor entry to the agency during regular business hours and within two hours of the surveyor's arrival at the agency.
97.525(c)	Having documentation of accreditation available at the time of a survey.
§97.527(b)	Providing surveyor with audio recording of the exit conference if made by the agency.
§97.527(c)	Providing surveyor with video recording of the exit conference if made by the agency.
§97.527(g)(1)-(2)(A)-(D)	Submitting an acceptable plan of correction and correcting a violation within the required time frame.

Figure: 40 TAC §97.602(h)(3)(E)

SEVERITY LEVEL B VIOLATIONS \$500 - \$1,000 per violation	
Rule Cite	Subject Matter
§97.11(d)	Requirement to have a separate license for each place of business.
§97.23	A license may not be sold or assigned to another person.
§97.220(b)	Maintaining adequate staff to provide services and supervise the provision of services within the service area.
§97.241(a), (c), and (d) separate penalties	Management responsibilities.
§97.243(a)(1)	Designating a qualified agency administrator.
§97.243(a)(2)	Designating a qualified agency alternate administrator.
§97.243(b)(1)(A)-(F) and (2)-(3) separate penalties	Responsibilities of an agency administrator.
§97.243(c)(1)	Requirement to directly employ or contract with a qualified individual to serve as the supervising nurse.
§97.243(c)(2)	Requirement to designate a qualified alternate supervising nurse.
§97.243(c)(2)(A)(i)-(iv) separate penalties	Supervisory responsibilities of the supervising nurse or alternate supervising nurse.
§97.243(c)(2)(B)	Allowing the supervising nurse to be the administrator if the supervising nurse meets the qualifications of the administrator.
§97.243(c)(3)	Requirements for the supervision of physical, occupational, speech, or respiratory therapy; medical social services; or nutritional counseling.
§97.243(d)	Enforcing a written policy for the supervision of branch offices or alternate delivery sites, if established.
§97.244(a)(1)	Qualifications of the agency administrator and alternate administrator for agencies licensed to provide licensed home health services, licensed and certified home health services or hospice services.
§97.244(a)(2)	Qualifications of the agency administrator and alternate administrator for agencies licensed to provide only personal assistance services.
§97.244(b)(1)-(5) separate penalties	Conditions of the agency administrator and alternate administrator.
§97.244(c)(1)	Qualifications of the supervising nurse and alternate supervising nurse for agencies without the home dialysis designation.
§97.244(c)(2)	Qualifications of the supervising nurse and alternate supervising nurse for agencies with the home dialysis designation.
§97.245(a)-(b)(1)-(10) separate penalties	Enforcement of staffing policies that govern all personnel used by the agency.
§97.247(a)(1)-(3) and (5)(A)-(B)-(6)(A)-(B) and (b)(1)-(3) and (5)(A)-(B)-(6)(A)-(B) separate penalties	Verifying the employability and use of unlicensed applicants, employees and volunteers.
§97.249(c)	Reporting alleged acts of abuse, neglect, and exploitation of clients.
§97.250(b)(1)-(3), (c)(1)-(2), and (d)-(e) separate penalties	Enforcement of an agency's written policy for investigation of known and alleged acts of abuse, neglect, and exploitation and other complaints.

SEVERITY LEVEL B VIOLATIONS \$500 - \$1,000 per violation	
Rule Cite	Subject Matter
§97.251	Compliance with the agency's written policy to ensure that all professional disciplines comply with their respective professional practice acts or title acts for reporting and peer review.
§97.252(1)-(2)	An agency's financial ability to carry out its functions.
§97.256(a)	Having a written emergency preparedness and response plan based on a risk assessment.
§97.256(b)(1)-(4) separate penalties	Agency personnel responsible for developing, maintaining and implementing a written emergency preparedness and response plan.
§97.256(c)(1)-(5) separate penalties	Contents of a written emergency preparedness and response plan.
§97.256(d)(1)-(4) separate penalties	Response and recovery phases of a written emergency preparedness and response plan.
§97.256(e)(1)-(2) separate penalties	Procedures to triage clients in a written emergency preparedness and response plan.
§97.256(f)	Procedures in a written emergency preparedness and response plan to identify a client who may need evacuation assistance.
§97.256(g)	Assisting a client as requested to register with 2-1-1 for evacuation assistance.
§97.256(h)(1)-(4) separate penalties	Counseling each client about emergency preparedness.
§97.256(i)	Training agency personnel in their responsibilities in a written emergency preparedness and response plan.
§97.256(j) and (k) separate penalties	Annual review and update of a written emergency preparedness and response plan and annual test of the response phase of the plan.
§97.256(l)	Good faith effort to comply with rules on emergency preparedness planning and implementation.
§97.256(n)	Reproducing client records damaged during a disaster.
§97.256(o)(1)-(2) and (p) separate penalties	Notice of temporary changes due to an emergency or disaster.
§97.259(b)-(e) separate penalties	Initial educational training requirements for a first-time agency administrator and alternate administrator.
§97.259(f)	Documentation requirements for initial educational training of a first-time administrator and alternate administrator.
§97.260(a)	Annual continuing education requirements for an agency administrator and alternate administrator.
§97.260(b)	Continuing education requirements for an agency administrator and alternate administrator who has not served for 180 days or more immediately preceding the date of designation.
§97.260(c)	Documentation requirements for continuing education of an administrator and alternate administrator.
§97.281(1)-(16) separate penalties	Enforcement of a written policy for client care practices.
§97.282(a)-(f)(1)-(8) and (g)-(h) separate penalties	Compliance with an agency policy on client conduct and responsibility and client rights.
§97.284	Compliance with the Clinical Laboratory Improvement Amendments of 1988.
§97.285	Compliance with written policies addressing infection control.

SEVERITY LEVEL B VIOLATIONS \$500 - \$1,000 per violation	
Rule Cite	Subject Matter
§97.285(1)(A)-(C) and (2) separate penalties	Enforcement and compliance with written policies on infection control.
§97.286(b)	Compliance with 25 TAC §§1.131-1.137 concerning the Definition, Treatment, and Disposition of Special Waste from Health Care-Related Facilities.
§97.287(a)(1)-(3) and (b)-(c) separate penalties	An agency's Quality Assessment and Performance Improvement Program.
§97.288(a)-(b) separate penalties	Compliance with an agency's written policy for coordination of services and documentation requirements.
§97.289(a)-(b) separate penalties	An agency's use of and agreement with independent contractors and arranged services.
§97.289(c)(1) and (3) separate penalties	Initial searches and searches at least every 12 months of the nurse aide registry and employee misconduct registry for unlicensed staff providing services under arrangement.
§97.289(d)(1)-(2) separate penalties	Conducting and reviewing a criminal history check for an unlicensed person that provides services under arrangement.
§97.290(a)	Enforcing a written policy that backup services are available when needed.
§97.290(a)(1)-(2)	Documentation that a client's designee agreed to provide backup services.
§97.290(b)	Enforcing a written policy that clients are educated in how to access care after hours.
§97.291(1)-(2) separate penalties	Implementing a written policy for an agency's written contingency plan.
§97.292(a)	Complying with the terms of a written agreement for services that the agency provided to a client or a client's family.
§97.295(a)(1)-(2) separate penalties	Providing a client with written notification, and notifying a client's attending physician if applicable, of transfer or discharge.
§97.295(b)	An agency providing written notification of a client's transfer or discharge within the required time frame.
§97.296(a)	Enforcement of an agency's policy regarding acceptance of physician delegation orders.
§97.296(b)	Information the agency must receive to accept physician delegation.
§97.297	Enforcement of a written policy describing protocols and procedures agency staff must follow when receiving physician orders, if applicable.
§97.297(1)	Countersignature of physician verbal orders.
§97.298	Enforcement of a written policy for ensuring compliance with the rules adopted by the Texas Board of Nursing in 22 TAC Chapter 224 (Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments) and 22 TAC Chapter 225 (RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions).
§97.300(b)	Enforcement of a written policy for maintaining a current medication list and a current medication administration record.

SEVERITY LEVEL B VIOLATIONS \$500 - \$1,000 per violation	
Rule Cite	Subject Matter
§97.300(b)(1)-(2)(A)-(B) and (3) separate penalties	The administration of medication.
§97.303(1)-(3)(A)-(F) separate penalties	The possession and use of sterile water or saline, certain vaccines or tuberculin, and certain dangerous drugs.
§97.321(c)(2)	Maintaining adequate staff to provide and supervise services at a branch office.
§97.322(c)(2)	Maintaining adequate staff to provide and supervise services at an alternate delivery site.
§97.401(b)(1)-(2)(A)-(B) separate penalties	Acceptance of a client for home health services and the initiation of services.
§97.401(d)	Requirement that qualified personnel provide and supervise all services.
§97.401(e)	Requirement that all staff providing services, delegation, and supervision be employed by or be under contract with the agency.
§97.401(g)	Age and competency of unlicensed persons providing licensed home health services.
§97.402(a)	Compliance with the Medicare Conditions of Participation (Social Security Act, Title 42, Code of Federal Regulations, Part 484.)
§97.402(c)-(e) separate penalties	Compliance with §97.701(f) of this chapter (relating to Home Health Aides) for an agency that implements a competency evaluation program.
§97.403(a)	Compliance with the Social Security Act and the regulations in Title 42, Code of Federal Regulations, Part 418.
§97.403(c)	Enforcement of a written policy for the provision of hospice services.
§97.403(d)(1)-(3) separate penalties	Requirement and conditions of the medical director for an agency that provides hospice services.
§97.403(e)(1)(A)-(D) separate penalties	Composition of an interdisciplinary team or teams.
§97.403(e)(2)(A)-(D) separate penalties	Responsibilities of the interdisciplinary team.
§97.403(e)(4)	Designating a registered nurse to coordinate implementation of the plan of care for each client.
§97.403(f)(1)	Ensuring continuity of client and family care in home and outpatient and inpatient settings.
§97.403(f)(2)	Contract requirements for providing arranged services.
§97.403(f)(3)	Professional management responsibility for arranged services.
§97.403(f)(5)	Ensuring that inpatient care is furnished only in a licensed facility and according to contract requirements.
§97.403(g)(1)-(3) separate penalties	Time requirements for contacting the client or client's representative, performing the initial health assessment visit, and initiation of services.
§97.403(h)	Performing and making available to each client a comprehensive health assessment that identifies the client's needs.
§97.403(h)(1)	Completing the comprehensive health assessment in a timely manner.
§97.403(h)(2)(A)-(C) separate penalties	Composition of the comprehensive health assessment.

SEVERITY LEVEL B VIOLATIONS \$500 - \$1,000 per violation	
Rule Cite	Subject Matter
§97.403(h)(3)(A)-(B) separate penalties	Requirement for updating and revising the comprehensive health assessment.
§97.403(i)(1)-(3) separate penalties	Requirements for a written plan of care.
§97.403(m)	Ensuring that all core services are provided, and requirements for using contracted staff, if necessary.
§97.403(n)(1)-(3) separate penalties	Requirements for providing nursing care and services.
§97.403(o)	Qualifications of the social worker performing hospice services.
§97.403(p)	Requirements for ensuring that general medical needs of clients are met.
§97.403(q)(1)-(4) separate penalties	Requirements for providing counseling services.
§97.403(r)	Requirements for providing services, maintaining a system for ensuring identification of client needs, communication across all disciplines, and integration of services.
§97.403(s)	Requirements for having therapy services available.
§97.403(t)	Requirements for having home health aide and homemaker services available.
§97.403(t)(1)-(2) separate penalties	Requirements for RN supervisory visits to assess aide services.
§97.403(u)(1)-(3) separate penalties	Requirements for providing medical supplies, appliances, and medications, as needed, for palliation and management of terminal illness and related conditions.
§97.403(v)	Requirements that inpatient care be available for pain control, symptom management, and respite.
§97.403(v)(1)	Requirements for providing inpatient care.
§97.403(v)(2)(A)-(B) separate penalties	Requirements for a quality assessment and performance improvement plan for hospice services.
§97.403(w)(1)(A)-(B) separate penalties	Requirements for having on-site 24-hour nursing services provided by RNs and LVNs.
§97.403(w)(2)(A)-(G) separate penalties	Implementation of a written disaster preparedness and response plan for a freestanding hospice in the event of a disaster.
§97.403(w)(3)	Meeting all federal, state, and local laws, regulations, and codes pertaining to health and safety.
§97.403(w)(4)	Meeting the National Fire Protection Association Life Safety Code for fire in buildings and structures.
§97.403(w)(9)	Having available at all times a quantity of linen essential for proper care of clients and requirements to prevent the spread of infection on linens.
§97.403(w)(10)	Making provisions for isolating clients with infectious diseases.
§97.403(w)(12)(A)-(I) separate penalties	Methods and procedures for dispensing and administering medications.
§97.404(c)	Qualifications of agency staff performing personal assistance services.
§97.404(d)	Tasks authorized under a personal assistance services license category.

SEVERITY LEVEL B VIOLATIONS \$500 - \$1,000 per violation	
Rule Cite	Subject Matter
§97.404(g)	Enforcement of a written policy that addresses the supervision of agency personnel with input from the client or family on the frequency of supervision.
§97.404(g)(1)-(2) separate penalties	Conditions and qualifications for supervising agency personnel delivering personal assistance services.
§97.404(h)(1)-(5) separate penalties	Performance of gastrostomy tube feedings and medication administration for an agency that provides personal assistance services.
§97.405(a)	Requirements for agencies that provide peritoneal dialysis or hemodialysis services.
§97.405(c)(1)-(2) separate penalties	Qualifications and responsibilities of the medical director for an agency that provides home dialysis services.
§97.405(e)(1)(A)-(C) separate penalties	Provision and supervision of nursing services for an agency that provides home dialysis services.
§97.405(e)(2)	Provision of nutritional counseling for an agency that provides home dialysis services.
§97.405(e)(3)	Provision of medical social services for an agency that provides home dialysis services.
§97.405(f)(1)	Requirements for orientation and training of personnel providing direct care to clients receiving home dialysis services.
§97.405(f)(2)(A)-(G) separate penalties	Requirement for an orientation and skills education period for licensed nurses.
§97.405(i)	Requirement that an agency coordinate the exchange of medical and other important information when transferring a home dialysis client to a health-care facility for treatment.
§97.405(k)	Requirement for routine hepatitis testing of home dialysis clients and agency employees providing dialysis care.
§97.405(k)(1)(A)-(C) separate penalties	Requirements for hepatitis B screening and vaccinations for staff.
§97.405(k)(2)(A)-(E) separate penalties	Requirements for hepatitis B screening and vaccinations for clients.
§97.405(l)	Requirements for employees providing direct care to clients to have a current CPR certification.
§97.405(m)	Requirement for initial admission assessment of a client for home dialysis services.
§97.405(n)	Requirement for development of a long-term program for a client receiving home dialysis services.
§97.405(o)	Requirement that the agency conducts a history and physical of a home dialysis client at admission and annually.
§97.405(p)(1)-(2) separate penalties	Requirement for physician orders for home self-assisted dialysis treatment.
§97.405(q)(1)-(7) separate penalties	Requirements for development and implementation of a care plan for a home dialysis client.
§97.405(r)	Requirement for medication administration by licensed personnel for an agency that provides home dialysis services.
§97.405(s)(2)-(3) separate penalties	Additional requirements for maintaining client records in an agency that provides home dialysis services.

SEVERITY LEVEL B VIOLATIONS \$500 - \$1,000 per violation	
Rule Cite	Subject Matter
§97.405(t)(1)-(4) separate penalties	Requirements for use of water in the home dialysis setting.
§97.405(u)	Adoption and enforcement of a policy to test dialysis equipment prior to each treatment.
§97.405(v)	Enforcing the agency's written preventive maintenance program for home dialysis equipment.
§97.405(v)(1), (1)(A), (1)(C)-(D), and (2) separate penalties	Implementing requirements for a written preventive maintenance program for home dialysis equipment.
§97.405(w)(1)-(6) separate penalties	Reuse of disposable medical devices in the home dialysis setting.
§97.405(x)(1)-(2)	Provision of laboratory services.
§97.405(x)(3)-(4) separate penalties	Provision of laboratory services.
§97.405(y)(1)-(2) separate penalties	Supplies for home dialysis services.
§97.405(z)(1)-(7) separate penalties	Compliance with policies and procedures for medical emergencies and emergencies resulting from a disaster required of an agency that provides home dialysis services.
§97.406(2)-(5) separate penalties	Provision of psychoactive services.
§97.407(1)-(11) separate penalties	Provision of intravenous therapy services.
§97.523(e)	Requirement to grant the surveyor entry to the agency if closed when the surveyor arrives during regular business hours.
§97.701(a)-(f)(1)-(7) separate penalties	Home health aides.

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Comptroller of Public Accounts

Notice of Contract Amendment

The Comptroller of Public Accounts (Comptroller) announces the amendment of the following contract:

The notice of request for proposals (RFP #185a) was published in the May 2, 2008, issue of the *Texas Register* (33 TexReg 3670). The Notice of Award was published in the September 19, 2008, issue of the *Texas Register* (33 TexReg 8050).

The contractor provides investment consulting services to the Comptroller and the Texas Prepaid Higher Education Tuition Board.

The contract was awarded to Hewitt EnnisKnupp, Inc., 10 South Riverside Plaza, Suite 1600, Chicago, Illinois 60606. The term of the contract is August 27, 2008 through August 31, 2011, with option to renew for one (1) additional one-year term. This amendment extends the term of the contract through August 31, 2012. The amount of the contract is \$300,000.00.

TRD-201102579

William Clay Harris

Assistant General Counsel, Contracts

Comptroller of Public Accounts

Filed: July 7, 2011

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/11/11 - 07/17/11 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/11/11 - 07/17/11 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005³ for the period of 07/01/11 - 07/31/11 is 18% for Consumer/Agricultural/Commercial/credit through \$250,000.

The monthly ceiling as prescribed by §303.005 for the period of 07/01/11 - 07/31/11 is 18% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

³ For variable rate commercial transactions only.

TRD-201102576

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: July 6, 2011

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/18/11 - 07/24/11 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/18/11 - 07/24/11 is 18% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

TRD-201102630

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: July 11, 2011

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 22, 2011**. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 22, 2011**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the com-

ment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: Bammel Forest Utility Company; DOCKET NUMBER: 2011-0497-UTL-E; IDENTIFIER: RN101202935; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.39(o)(1), §291.162(a) and (j) and TWC, §13.1395(b)(2), by failing to submit to the executive director for approval by the required deadline an adoptable emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: \$262; ENFORCEMENT COORDINATOR: Jeremy Escobar, (361) 825-3422; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Budhwani & Virani, Incorporated dba Que Paso Food Store; DOCKET NUMBER: 2011-0693-PST-E; IDENTIFIER: RN101564805; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank (UST) for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring); 30 TAC §334.10(b), by failing to maintain the required UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: \$3,220; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 2309 Gravel Drive Fort, Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: City of Lexington; DOCKET NUMBER: 2011-0549-MWD-E; IDENTIFIER: RN101916906; LOCATION: Lexington, Lee County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010016001, Monitoring and Reporting Requirements Number 1 and 30 TAC §305.125(1) and §319.7(d), by failing to timely submit the monthly discharge monitoring reports by the 20th day of the following month; TPDES Permit Number WQ0010016001, Sludge Provisions and 30 TAC §305.125(17), by failing to timely submit monitoring results at the intervals specified in the permit; TPDES Permit Number WQ0010016001, Effluent Limitations and Monitoring Requirements Numbers 1 and 6, 30 TAC §305.125(1), and TWC, §26.121(a), by failing to comply with permitted effluent limits; PENALTY: \$6,670; Supplemental Environmental Project offset amount of \$5,336 applied to Texas State University River Systems Institute-Continuous Water Quality Monitoring Network; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(4) COMPANY: City of Sherman; DOCKET NUMBER: 2011-0376-PST-E; IDENTIFIER: RN102348638; LOCATION: Sherman, Grayson County; TYPE OF FACILITY: non-retail fleet service center; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide a method of release detection for the piping associated with the underground storage tank system; PENALTY: \$1,875; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2011-0530-AIR-E; IDENTIFIER: RN102926920; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c), Permit Number 6257E, Special Conditions Number 1, and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §101.201(b)(1)(H) and THSC, §382.085(b), by failing to submit a complete final record for incident Number 147007; PENALTY: \$7,789;

Supplemental Environmental Project offset amount of \$3,116 applied to Barbers Hill Independent School District, Alternative Fueled Vehicle and Equipment Program; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 422-8398; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: ExxonMobil Oil Corporation; DOCKET NUMBER: 2011-0374-AIR-E; IDENTIFIER: RN102450756; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §§116.115(b)(2)(F) and (c), 122.143(4) and 101.20(3), Federal Operating Permit (FOP) Number O-01998, Special Terms and Conditions Number 14, Air Permit Number 19566, PSD-TX-768M1 and PSD-TX-932, Special Conditions Number 1, and FOP Number O, by failing to comply with the sulfur dioxide allowable hourly emission rate; PENALTY: \$10,000; Supplemental Environmental Project offset amount of \$4,000 applied to Southeast Texas Regional Planning Commission, Southeast Texas Regional Air Monitoring Network Ambient Air Monitoring Station; ENFORCEMENT COORDINATOR: Raymond Marlow, P.G., (409) 899-8785; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(7) COMPANY: EZ ACTION RETAIL, L.P. dba Kwik Stop; DOCKET NUMBER: 2011-0768-PST-E; IDENTIFIER: RN102480993; LOCATION: Flatonia, Fayette County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide proper release detection for the pressurized piping associated with the underground storage tanks; PENALTY: \$1,985; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(8) COMPANY: Fort Bend County Municipal Utility District Number 130; DOCKET NUMBER: 2011-0494-MWD-E; IDENTIFIER: RN102342391; LOCATION: Katy, Fort Bend County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0014011001, Effluent Limitations and Monitoring Requirements Numbers 1 and 6; PENALTY: \$14,840; ENFORCEMENT COORDINATOR: Heather Brister, (254) 761-3034; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: HOUSTON AIRPORT HOSPITALITY LP dba Holiday Inn; DOCKET NUMBER: 2011-0460-UTL-E; IDENTIFIER: RN101233427; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.39(o)(1) and §291.162(a) and (j) and TWC, §13.1395(b)(2), by failing to submit to the executive director for approval by March 1, 2010, an adoptable emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: \$695; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(10) COMPANY: Ibrahim Abu-Hamra dba Astrodome Texaco; DOCKET NUMBER: 2011-0671-PST-E; IDENTIFIER: RN102258688; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2), and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and by failing to provide release detection for the pressurized piping associated with the USTs; PENALTY: \$1,755; ENFORCEMENT COORDINATOR: Mike Pace,

(817) 588-5933; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: INEOS USA LLC; DOCKET NUMBER: 2011-0614-AIR-E; IDENTIFIER: RN100238708; LOCATION: Brazoria County; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §101.20(3) and §116.715(a), Flexible Permit Numbers 95 and PSD-TX-854M2, Special Conditions Number 1, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §101.201(b)(1)(G) and THSC, §382.085(b), by failing to report all contaminants released in the final report; PENALTY: \$10,496; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3629; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: J & J WELL SERVICE INCORPORATED; DOCKET NUMBER: 2011-0264-MSW-E; IDENTIFIER: RN104662614; LOCATION: San Angelo, Tom Green County; TYPE OF FACILITY: an oil and gas well servicing company; RULE VIOLATED: 30 TAC §330.15(a) and (c), by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: \$7,500; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (325) 655-9479.

(13) COMPANY: Janie Riddle dba Mary's Brazos Café; DOCKET NUMBER: 2011-0536-PWS-E; IDENTIFIER: RN104375936; LOCATION: Weatherford, Parker County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B) and Texas Health and Safety Code (THSC), §341.033(d), by failing to collect routine distribution water samples for coliform analysis and by failing to provide notice to persons served by the facility regarding the failure to sample for the months of May, June, August - December 2009 and February 2010; 30 TAC §290.109(c)(2)(F) and §290.122(c)(2)(B) and THSC, §341.033(d), by failing to collect at least five distribution coliform samples the month following a total coliform-positive sample result and failing to provide notice to persons served by the facility regarding the failure to sample for the month of October 2010; PENALTY: \$3,098; ENFORCEMENT COORDINATOR: Andrea Byington, (512) 239-2579; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: Lew Click; DOCKET NUMBER: 2011-1083-WOC-E; IDENTIFIER: RN106117443; LOCATION: Morgan Mill, Erath County; TYPE OF FACILITY: occupational licensing; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$210; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: Maund Automotive Group, LP; DOCKET NUMBER: 2011-0902-PST-E; IDENTIFIER: RN100536929; LOCATION: Austin, Travis County; TYPE OF FACILITY: motor vehicle dealer with one underground storage tank; RULE VIOLATED: 30 TAC §334.50(b)(2)(B)(i)(I) and TWC, §26.3475(b), by failing to provide proper release detection for the suction piping associated with the underground storage tank system; PENALTY: \$2,352; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(16) COMPANY: OCP - Tres Rios LLC; DOCKET NUMBER: 2011-0535-PWS-E; IDENTIFIER: RN101241735; LOCATION: Glen Rose, Somervell County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B) and Texas Health and Safety Code, §341.033(d), by failing to collect rou-

tine distribution water samples for coliform analysis for the months of April 2010 and September 2010 - March 2011, and by failing to provide notice to persons served by the facility regarding the failure to sample for the month of April; PENALTY: \$3,034; ENFORCEMENT COORDINATOR: Andrea Byington, (512) 239-2579; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: OMEGA RETAIL, INCORPORATED dba Little Buddy 4; DOCKET NUMBER: 2011-0433-PST-E; IDENTIFIER: RN102366176; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$1,925; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(18) COMPANY: RYK ENTERPRISES, LLC dba Acres Grocery; DOCKET NUMBER: 2011-0701-PST-E; IDENTIFIER: RN101777563; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$1,875; ENFORCEMENT COORDINATOR: Theresa Hagood, (512) 239-2540; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(19) COMPANY: SANDFORD OIL COMPANY, INCORPORATED dba Circle S 17; DOCKET NUMBER: 2011-0787-PST-E; IDENTIFIER: RN101546257; LOCATION: Bridgeport, Wise County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and (A)(i)(III) and TWC, §26.3475(a), by failing to provide proper release detection for the pressurized piping associated with the underground storage tank, and by failing to test the line leak detectors at least once per year for performance and operational reliability; PENALTY: \$3,875; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(20) COMPANY: Shell Oil Company; DOCKET NUMBER: 2011-0475-AIR-E; IDENTIFIER: RN100211879; LOCATION: Deer Park, Harris County; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §101.20(3) and §116.715(a), Flexible Permit Numbers 21262 and PSDTX928, Special Conditions Number 1, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$10,000; Supplemental Environmental Project offset amount of \$5,000 applied to Barbers Hill Independent School District-Alternative Fueled Vehicle and Equipment Program; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 422-8938; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(21) COMPANY: Total Petrochemicals USA, Incorporated; DOCKET NUMBER: 2011-0603-AIR-E; IDENTIFIER: RN100212109; LOCATION: La Porte, Harris County; TYPE OF FACILITY: petrochemical plant; RULE VIOLATED: 30 TAC §116.115(c), New Source Review Permit Number 21538 Special Conditions Number 1, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions during an emissions event; PENALTY: \$10,000; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(22) COMPANY: Trican Well Service LP; DOCKET NUMBER: 2011-1082-WQ-E; IDENTIFIER: RN106112816; LOCATION: Mathis, San Patricio County; TYPE OF FACILITY: well service; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: \$700; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(23) COMPANY: Upper Leon River Municipal Water District; DOCKET NUMBER: 2011-0601-MWD-E; IDENTIFIER: RN104343181; LOCATION: Comanche County; TYPE OF FACILITY: wastewater treatment facility; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014544001 Effluent Limitations and Monitoring Requirements Numbers 1, 2, and 6, by failing to comply with permitted effluent limitations; 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0014544001, Sludge Provisions, by failing to timely submit the annual sludge report for the monitoring period ending July 31, 2010, by September 1, 2010; PENALTY: \$4,960; ENFORCEMENT COORDINATOR: Marty Hott, (512) 239-2587; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(24) COMPANY: West Wise Special Utility District; DOCKET NUMBER: 2011-0438-WQ-E; IDENTIFIER: RN101190270; LOCATION: Wise County; TYPE OF FACILITY: surface water treatment plant; RULE VIOLATED: TWC, §26.121(a)(1), by failing to prevent an unauthorized discharge of sewage, municipal waste, recreational waste, agricultural waste, or industrial waste into or adjacent to any water in the state; PENALTY: \$4,200; Supplemental Environmental Project offset amount of \$3,360 applied to Caddo Lake Watershed Enhanced Monitoring Program; ENFORCEMENT COORDINATOR: Michaelle Sherlock, (210) 403-4076; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(25) COMPANY: Zapata County; DOCKET NUMBER: 2011-0371-MWD-E; IDENTIFIER: RN104459573; LOCATION: Zapata County; TYPE OF FACILITY: wastewater treatment facility; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0014550001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with the permitted effluent limitations; 30 TAC §305.65 and §305.125(2) and TWC, §26.121(a)(1), by failing to maintain authorization for the discharge of wastewater; PENALTY: \$13,200; Supplemental Environmental Project offset amount of \$10,560 applied to Tire Collection, Recycling, and Disposal Events; ENFORCEMENT COORDINATOR: JR Cao, (512) 239-2543; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

TRD-201102643

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: July 12, 2011



Notice of Extension of Public Comment Period for Proposed Revisions to 30 TAC Chapter 115 and to the State Implementation Plan

In the June 24, 2011, issue of the *Texas Register*, (36 TexReg 3801 and 3834) the Texas Commission on Environmental Quality (commission) published the proposed rulemaking actions to 30 TAC Chapter 115 and to the State Implementation Plan (SIP). Additionally, the commission

also requested comments regarding the proposed Houston-Galveston-Brazoria Reasonably Available Control Technology Analysis Update SIP Revision for the 1997 Eight-Hour Ozone Standard and Dallas-Fort Worth (DFW) Attainment Demonstration SIP Revision and the DFW Reasonable Further Progress (RFP) SIP Revision for the 1997 Eight-Hour Ozone Standard (36 TexReg 3985). The initial notices stated that the commission must receive all written comments by July 25, 2011. The commission has extended the deadline for receipt of written comments to August 8, 2011.

Comments should be mailed to Charlotte Horn, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.texas.gov/rules/ecomments>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference the rule or SIP project number that the comment pertains to: Rule Project Number 2010-025-115-EN for the proposed volatile organic compounds storage rule amendments; Rule Project Number 2010-016-115-EN for the proposed control techniques guidelines reasonably available control technology (RACT) rule amendments; SIP Project Number 2010-022-SIP-NR for the proposed Dallas-Fort Worth (DFW) SIP Attainment Demonstration revision; SIP Project Number 2010-023-SIP-NR for the proposed DFW Reasonable Further Progress revision; and SIP Project Number 2010-028-SIP-NR for the proposed Houston-Galveston-Brazoria RACT analysis update SIP revision. The extended comment period closes August 8, 2011. Copies of the proposed rules can be obtained from the commission's Web site at http://www.tceq.texas.gov/nav/rules/propose_adapt.html. Copies of the proposed DFW SIP revisions and all appendices can be obtained from the commission's Web site at <http://www.tceq.texas.gov/airquality/sip/dfw/dfw-latest-ozone>. Copies of the proposed HGB SIP revisions and all appendices can be obtained from the commission's Web site at <http://www.tceq.texas.gov/airquality/sip/hgb/hgb-latest-ozone>. For additional information regarding the proposed rules and SIP revisions, please contact Lindley Anderson, Air Quality Planning Section, at (512) 239-0003.

TRD-201102637

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: July 11, 2011



Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 22, 2011**. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required

to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 22, 2011**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Carolyn Fink; DOCKET NUMBER: 2010-0997-PST-E; TCEQ ID NUMBER: RN104579990; LOCATION: 2419 North Wheeler Street, Lot 16, Jasper, Jasper County; TYPE OF FACILITY: underground storage tank (UST) system; RULES VIOLATED: 30 TAC §334.78(a), by failing to conduct a complete site assessment in response to the permanent removal from service of a UST system; PENALTY: \$1,000; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(2) COMPANY: City of Alpine; DOCKET NUMBER: 2010-0421-PWS-E; TCEQ ID NUMBER: RN101176261; LOCATION: 309 Sul Ross Avenue, Alpine, Brewster County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.46(f)(3)(C)(i), by failing to keep on file at the facility and make available for review during inspections records concerning variances or exceptions granted to the facility; 30 TAC §290.43(e) and TCEQ AO Docket Number 2004-0944-PWS-E, Ordering Provision 3.b.v., by failing to enclose all ground storage tanks with an intruder-resistant fence; 30 TAC §290.41(c)(3)(O), by failing to protect all well sites with an intruder-resistant fence; PENALTY: \$7,270; Supplemental Environmental Project (SEP) offset amount of \$7,270 applied to Texas Association of Resource Conservation and Development Areas, Inc.; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(3) COMPANY: Conner Steel Products Inc.; DOCKET NUMBER: 2010-1443-IHW-E; TCEQ ID NUMBER: RN102602307; LOCATION: 6738 United States (US) Highway 87 N, San Angelo, Tom Green County; TYPE OF FACILITY: steel and fiberglass storage tank manufacturing facility; RULES VIOLATED: 30 TAC §335.4, by failing to prevent the unauthorized disposal of industrial solid waste; 30 TAC §§335.62, 335.503(a), 335.513(c), and 40 Code of Federal Regulations (CFR) §262.11, by failing to conduct hazardous waste determinations and waste classifications; 30 TAC §335.262(c)(2), by failing to properly close containers used to store universal waste except when adding or removing waste; 30 TAC §335.262(c)(1) and (2) and 40 CFR §273.15(c)(1), by failing to properly label containers used to store universal waste; 30 TAC §335.6(c), by failing to properly update the facility's Notice of Registration; PENALTY: \$22,348; STAFF ATTORNEY: Jeff Huhn, Litigation Division, MC R-13, (210)403-4023; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(4) COMPANY: Don Finley; DOCKET NUMBER: 2010-0949-PST-E; TCEQ ID NUMBER: RN101554731; LOCATION: 8732 South Highway 171, Grandview, Johnson County; TYPE OF FACILITY: inactive UST system and a general store; RULES VIOLATED: 30 TAC §334.7(d)(3), by failing to notify the agency of any change

or additional information regarding the UST system within 30 days from the date of occurrence of the change or addition; and TWC, §26.3475(d) and 30 TAC §334.49 and §334.54(b)(2) and (c), by failing to maintain the corrosion protection system in a manner that ensures adequate corrosion protection for the UST system, and by failing to maintain all piping, pumps, manways, tank access points and ancillary equipment in a capped, plugged, locked, and otherwise secured manner to prevent access, tampering, or vandalism by an unauthorized person; PENALTY: \$4,725; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: John Charles May, Edward Russell Leath, Christopher Atwood Leath, Melissa May Leath, and Marilyn Louis Leath-Dziuk; DOCKET NUMBERS: 2009-0728-MSW-E and 2009-1811-MSW-E; TCEQ ID NUMBER: RN105602726; LOCATION: 2400 Block East Loop 254, Ranger, Eastland County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULES VIOLATED: 30 TAC §330.7(a) and §330.15(a) and (c), by failing to prevent the unauthorized disposal of MSW; PENALTY: \$5,250; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(6) COMPANY: Ralph Thomas and Janice Thomas; DOCKET NUMBER: 2008-1613-PST-E; TCEQ ID NUMBER: RN100899343; LOCATION: 1800 Houston Avenue, Houston, Harris County; TYPE OF FACILITY: inactive UST system; RULES VIOLATED: 30 TAC §§334.47(a)(2), 334.54(d)(2), and 334.54(b), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements, by failing to maintain all piping, pump, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons, and by failing to ensure that any residue from stored regulated substances which remained in the temporarily out-of-service UST system did not exceed a depth of 2.5 centimeters at the deepest point and did not exceed 0.3% by weight of the system at full capacity; and 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the UST system within 30 days of the occurrence of the change or addition; PENALTY: \$6,300; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: Sava Investments, Inc. dba Friday's General Store; DOCKET NUMBER: 2010-1634-PWS-E; TCEQ ID NUMBER: RN104711163; LOCATION: 7678 East US Highway 290, Johnson City, Blanco County; TYPE OF FACILITY: public water system; RULES VIOLATED: Texas Health and Safety Code, §341.033(d) and 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B), by failing to collect routine distribution water samples for coliform analysis and by failing to provide public notice of the failure to sample; PENALTY: \$3,920; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Austin Regional Office, 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(8) COMPANY: Sona Ventures, Inc. dba Fuel Depot 6; DOCKET NUMBER: 2011-0109-PST-E; TCEQ ID NUMBER: RN102038114; LOCATION: 2610 Broadway Street, Houston, Harris County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC

§334.50(b)(1)(A), by failing to monitor the UST system for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$5,100; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201102646

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: July 12, 2011



Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 22, 2011**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 22, 2011**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Aziz Dossani dba Docs Food & Deli Store; DOCKET NUMBER: 2010-1158-PST-E; TCEQ ID NUMBER: RN101546398; LOCATION: 3095 Claremont Drive, Grand Prairie, Tarrant County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code (THSC), §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; PENALTY: \$3,173; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Byron Cory; DOCKET NUMBER: 2010-1005-MLM-E; TCEQ ID NUMBER: RN101612489; LOCATION: 1111 Horizon Boulevard, El Paso, El Paso County; TYPE OF FACILITY: truck washing facility that sells tires; RULES VIOLATED: 30 TAC §328.56(d)(4), by failing to provide adequate vector control; TWC, §26.121(a)(1), by failing to prevent the unauthorized discharge of waste into or adjacent to water in the state; TWC, §26.121(a)(1) and 30 TAC §305.42, by failing to obtain authorization for the discharge of wastewater associated with a truck wash operation; and TWC, §5.702 and 30 TAC §21.4, by failing to pay outstanding TCEQ wastewater investigation fees for Account Number 0104392 and water quality assessment fees for Account Number 0608578 for fiscal year 2009, and administrative penalties for Account Number 23603735; PENALTY: \$4,780; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(3) COMPANY: Cecil L. McKnight and Mable McKnight; DOCKET NUMBER: 2010-1620-IHW-E; TCEQ ID NUMBER: RN105765796; LOCATION: five-acre parcel west of the dead end of County Road (CR) 614, Dayton, Liberty County; TYPE OF FACILITY: former rubber manufacturing facility; RULES VIOLATED: TWC, §26.121 and 30 TAC §335.4, by failing to prevent the unauthorized disposal and discharge of industrial solid waste; 30 TAC §335.62 and 40 Code of Federal Regulations (CFR) §262.11, by failing to conduct hazardous waste determinations and classifications; and 30 TAC §335.2(a) and 40 CFR §262.34(b), by failing to obtain authorization for industrial and hazardous waste storage and disposal; PENALTY: \$67,425; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: Cecil Lou Frasier; DOCKET NUMBER: 2009-1049-MSW-E; TCEQ ID NUMBER: RN105602726; LOCATION: 2400 Block East Loop 254, Ranger, Eastland County; TYPE OF FACILITY: unauthorized solid waste disposal site; RULES VIOLATED: 30 TAC §330.7(a) and §330.15(a) and (c), by failing to prevent the unauthorized disposal of municipal solid waste (MSW); PENALTY: \$5,250; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(5) COMPANY: Eva Sanchez; DOCKET NUMBER: 2010-1882-MSW-E; TCEQ ID NUMBER: RN105910764; LOCATION: 7704 East Texas Road, Edinburg, Hidalgo County; TYPE OF FACILITY: unauthorized disposal site; RULES VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of MSW; PENALTY: \$2,625; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(6) COMPANY: Frankie Willis, Executor of the Estate of Clovis Willis, Deceased; DOCKET NUMBER: 2010-2039-PST-E; TCEQ ID NUMBER: RN102839396; LOCATION: 507 Mignonette Street, Kosse, Limestone County; TYPE OF FACILITY: inactive UST system; RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; PENALTY: \$3,375; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(7) COMPANY: Head Family Partnership, Ltd.; DOCKET NUMBER: 2010-1960-IWD-E; TCEQ ID NUMBER: RN102380474; LOCATION: south side of the intersection of Interstate Highway 20 and Farm-to-Market Road 968, approximately 1,500 feet east of Loop 281, Harrison County; TYPE OF FACILITY: industrial wastewater system; RULES VIOLATED: TWC, §26.121(a), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0003068000, Effluent Limitations Requirements Number 1, by failing to comply with permitted effluent limits; 30 TAC §305.125(1), and §319.1, and TPDES Permit Number WQ0003068000, Monitoring and Reporting Requirements Number 1, by failing to submit a complete discharge monitoring report for the monitoring period ending September 30, 2009; PENALTY: \$6,355; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(8) COMPANY: Jon M. Huddleston; DOCKET NUMBER: 2011-0227-LII-E; TCEQ ID NUMBER: RN104374665; LOCATION: 1505 Julie Jacqueline Drive, Killeen, Bell County; TYPE OF FACILITY: landscaping business; RULES VIOLATED: 30 TAC §334.24(a) and §334.35(d)(2), by failing to obtain all permits and inspections required to install an irrigation system; 30 TAC §344.50(c), by failing to test the irrigation system's backflow prevention device upon installation of the irrigation system; and 30 TAC §344.71(b), by failing to include in all written estimates, proposals, bids, and invoices relating to the installation or repair of an irrigation system(s) the statement: "Irrigation in Texas is regulated by the Texas Commission on Environmental Quality (TCEQ) (MC-178), P.O. Box 13087, Austin, Texas 78711-3087. TCEQ's Web site is www.tceq.texas.gov"; PENALTY: \$1,220; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(9) COMPANY: Mohammad Adil Aqil; DOCKET NUMBER: 2011-0266-PST-E; TCEQ ID NUMBER: RN102044336; LOCATION: at the corner of Interstate Highway 10 East and Jenkins Road, Anahuac, Chambers County; TYPE OF FACILITY: UST system and property; RULES VIOLATED: 30 TAC §334.47(a)(2) and §334.54(b)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements, and by failing to maintain all piping, pumps, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons; and 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition; PENALTY: \$5,425; STAFF ATTORNEY: Stephanie Frazee, Litigation Division, MC 175, (512) 239-3693; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: South Fort Worth RV Ranch, LLC; DOCKET NUMBER: 2011-0193-MWD-E; TCEQ ID NUMBER: RN104813605; LOCATION: 2301 South Interstate Highway 35 West, on the east side of I-35 West, approximately 5/8 mile north of the intersection of Bethesda Road and I-35 West, Johnson County; TYPE OF FACILITY: municipal wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and TPDES Permit Number WQ0014680001, Interim Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$5,220; STAFF ATTORNEY: Stephanie Frazee, Litigation Division, MC 175, (512) 239-3693; REGIONAL

OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: Timothy Mannan; DOCKET NUMBER: 2011-0453-MLM-E; TCEQ ID NUMBER: RN106053127; LOCATION: 7129 Merrell Court, Burleson, Johnson County; TYPE OF FACILITY: unauthorized municipal waste disposal site; RULES VIOLATED: 30 TAC §111.201 and THSC, §382.085(b), by failing to prevent unauthorized outdoor burning; and 30 TAC §330.15(a), by failing to prevent the unauthorized disposal of MSW; PENALTY: \$2,047; STAFF ATTORNEY: Marshall Coover, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Warren R. Blackmon, Jr. dba Blackmon Carcass Removal; DOCKET NUMBER: 2010-1537-MSW-E; TCEQ ID NUMBER: RN104999347; LOCATION: near the intersection of Gant Road and Haun Road, south of Farm-to-Market Road 902, Tom Bean, Grayson County; TYPE OF FACILITY: unauthorized disposal site; RULES VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of MSW; PENALTY: \$10,500; STAFF ATTORNEY: Anna Treadwell, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: We Are Crazy, Inc. dba Country Pantry 10; DOCKET NUMBER: 2011-0275-PST-E; TCEQ ID NUMBER: RN102855947; LOCATION: 990 East Railroad Street, Vidor, Orange County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: THSC, §382.085(b) and 30 TAC §115.244(1) and (3), by failing to conduct daily and monthly inspections of the Stage II vapor recovery system; THSC, §382.085(b) and 30 TAC §115.246(1) and (3), by failing to maintain all required Stage II records at the station and make them immediately available for review upon request by agency personnel; and THSC, §382.085(b) and 30 TAC §115.248(1) and (2), by failing to ensure that at least one station representative received training in the operation and maintenance of the Stage II vapor recovery system, and each current employee received in-house Stage II vapor recovery training regarding the purpose and correct operating procedures of the Stage II system; PENALTY: \$4,178; STAFF ATTORNEY: Marshall Coover, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-201102647

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: July 12, 2011



Notice of Water Quality Applications

The following notices were issued on June 30, 2011 through July 8, 2011.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

CITGO REFINING AND CHEMICALS COMPANY LP which operates a petroleum refinery, has applied for a major amendment to Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0000467000 to remove authorization to discharge treated pump lube oil from the hydrogen plant via Outfalls 001 and 002; reduce the monitoring frequencies for phenols, sulfides, total chromium, and hexavalent chromium at Outfalls 001 and 002; remove the monitoring requirement for total lead at Outfall 001; authorize the discharge of wastewater from fire-fighting activities and vapor suppression waters via Outfalls 001 and 002; remove effluent limitations for total chromium and BTEX at Outfall 003; authorize the discharge of hydrostatic test waters via Outfalls 001, 002, 003, 004, 005, 006, and 007; authorize the discharge of miscellaneous non-storm water flows via Outfalls 003, 004, 005, 006, and 007; authorize the discharge of de minimus quantities of process wastewater and utility wastewaters via Outfalls 003, 004, 005, 006, and 007; authorize the discharge of storm water runoff, cooling tower blowdown, miscellaneous non-storm water flows, and de minimus quantities of process wastewater and utility wastewaters via new Outfall 008 on an intermittent and flow variable basis; and authorize the acceptance of wastewaters from off-site terminals and pipelines associated the CITGO refinery. The current permit authorizes process wastewater, utility wastewater and storm water at a daily average flow not to exceed 3,500,000 gallons per day via Outfall 001; process wastewater, utility wastewater, domestic wastewater, and storm water at a daily average flow not to exceed 1,600,000 gallons per day via Outfall 002; storm water runoff and cooling tower blowdown on an intermittent and flow variable basis via Outfall 003; and non-process area storm water runoff on an intermittent and flow variable basis via Outfalls 004, 005, 006, and 007. The facility is located at 1801 Nueces Bay Boulevard in the City of Corpus Christi, Nueces County, Texas 78407-2221. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the action is consistent with the applicable CMP goals and policies.

SEADRIFT COKE LP which operates a petroleum needle coke production and calcining facility, has applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment to TPDES Permit No. WQ0002586000 to authorize an increase in the daily average flow to 202,000 gallons per day and the daily maximum flow to 821,000 gallons per day via Outfall 001. The current permit authorizes the discharge of washdown water, treated storm water, cooling tower blowdown, demineralizer wastewater, treated drainage from the fire training grounds, and treated domestic wastewater at a daily average flow not to exceed 193,000 gallons per day and a daily maximum flow not to exceed 445,000 gallons per day via Outfall 001; and storm water on an intermittent and flow variable basis via Outfalls 002 and 003. The facility is located between State Highway 185 and the Victoria Barge Canal, south of the intersection of State Highways 185 and 35, approximately 6.0 miles northwest of the City of Seadrift, Calhoun County, Texas 77979. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the action is consistent with the applicable CMP goals and policies.

MARTIN OPERATING PARTNERSHIP LP which operates Stanolind Cut Terminal, a storage and distribution facility for molten sulphur, sulphuric acid, asphalt and fuel oil #6, crude oil, and diesel fuel, has applied for a renewal of TPDES Permit No. WQ0004074000, which authorizes the discharge of process wash water from the acid truck and acid cutter areas, non contact cooling water, water softener wastewater, boiler blowdown, and storm water (from the tank containment area, rail

loading area, and acid rack) on an intermittent and flow variable basis via Outfall 001. The facility is located at Number 10 Sulphur Plant Road, 0.7 miles east of the interchange of State Highway 380 and US Route 69, southeast of the City of Beaumont, Jefferson County, Texas 77701.

LAMAR POWER PARTNERS II LLC which proposes to operate Lamar Energy Center has applied for a renewal of TPDES Permit No. WQ0004846000, which authorizes the discharge of cooling tower blowdown, previously monitored effluents (low volume waste sources), and filter backwash water at a daily average flow not to exceed 1,300,000 gallons per day via Outfall 001. The facility is located 3,000 feet south of the intersection of Farm-to-Market Road 137 and State Road Loop 286, Lamar County, Texas 75462.

TERRA RENEWAL SERVICES INC has applied for a new permit, Proposed TCEQ Permit No. WQ0004950000, to authorize the land application of wastewater treatment plant sewage sludge and water treatment plant sludge for beneficial use on 621.5 acres. The beneficial land application site will be located at the intersection of Hamrock Road and Joe's Road, approximately 1.1 miles south of the intersection of Hamrock Road and Hooser Road, approximately 1.5 miles west of the intersection of Hooser Road and Farm-to-Market Road 667, approximately 4.5 miles south of Italy, in Ellis and Navarro Counties, Texas 76651.

CITY OF GROVETON has applied for a renewal of TPDES Permit No. WQ0010556001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 220,000 gallons per day. The facility is located Southeast of the City of Groveton on Coletto Road, adjacent to Kickapoo Creek in Trinity County, Texas 75845.

TIMBER LANE UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0011142002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,620,000 gallons per day. The facility is located at 22801 1/2 Grand Rapids Lane, approximately 0.5 mile southwest of the intersection of Wood River Drive and Aldine-Westfield Road, 2.75 miles northeast of the intersection of Farm-to-Market Road 1960 and Interstate Highway 45, and approximately 20 miles north of the City of Houston in Harris County, Texas 77373.

COLLIN PARK MARINA INC has applied for a renewal of TPDES Permit No. WQ0012051001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The facility is located at 2200 S. Paul Road, approximately 2.7 miles southeast of the intersection of Farm-to-Market Road 1378 and Farm-to-Market Road 2514, on the southwest side of Lavon Lake in Collin Park in Collin County, Texas 75098.

TIM BENNETT ENGINEERING AND CONSTRUCTION INC has applied for a renewal of TPDES Permit No. WQ0014432001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 280,000 gallons per day. The facility will be located 1,000 feet north from the intersection of Farm-to-Market Road 546 and Farm-to-Market Road 3286 in Collin County, Texas 75407.

TEXAS DEPARTMENT OF TRANSPORTATION has applied for a renewal of TPDES Permit No. WQ0014790001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 11,000 gallons per day. The facility is located on the north-bound right-of-way of Interstate Highway 35 West, at Exit 31 North-bound, at a point approximately 0.8 mile north of the intersection of Interstate Highway 35 West and Farm-to-Market Road 917 in Johnson County, Texas 76028.

LAND TEJAS TEXAS CITY LTD has applied for a renewal of TPDES Permit No. WQ0014819001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000

gallons per day. The facility will be located approximately 0.6 mile north of the intersection of Avenue A and Autry Drive in Texas City in Galveston County, Texas 77510.

SOUTH CENTRAL WATER COMPANY has applied for a new permit proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014988001 to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility will be located approximately 1,600 feet south east of the intersection of U.S. Highway 281 and Farm-to-Market Road 1863 in the town of Bulverde in Comal County, Texas 78163.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.state.tx.us. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201102668

Melissa Chao

Acting Chief Clerk

Texas Commission on Environmental Quality

Filed: July 13, 2011



Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on July 6, 2011, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Thomas V. Hope d/b/a SWT Farm & Ranch Supply; SOAH Docket No. 582-11-1398; TCEQ Docket No. 2009-1377-MLM-E. The Commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Thomas V. Hope d/b/a SWT Farm & Ranch Supply on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Melissa Chao, Office of the Chief Clerk, (512) 239-3300.

TRD-201102669

Melissa Chao

Acting Chief Clerk

Texas Commission on Environmental Quality

Filed: July 13, 2011



Request for Nominations

The Texas Commission on Environmental Quality (TCEQ) is requesting nominations for six individuals to serve on the Municipal Solid Waste Management and Resource Recovery Advisory Council (Advisory Council) to fill the following positions: 1) a representative of the general public; 2) an official from a municipality or county solid waste agency; 3) an elected official from a municipality with a population of 750,000 or more (*this includes elected officials from Austin, Dallas, Houston, and San Antonio*); 4) an elected official from a county with any population size; 5) an elected official from a municipality with a population fewer than 25,000; and 6) a representative from a public solid waste district or authority.

The Advisory Council was created by the 68th Legislature in 1983. Members represent various interests, which include city and county solid waste agencies, public solid waste districts or authorities, commercial solid waste landfills, planning regions, environmental perspectives, city and county governments, financial advisors, registered waste tire processors, professional engineers, solid waste professionals, composting/recycling companies, and general public representatives.

Upon request from the TCEQ commissioners, the Advisory Council reviews and evaluates the effect of state policies and programs on municipal solid waste (MSW) management; makes recommendations on matters relating to MSW management; recommends legislation to encourage the efficient management of MSW; recommends policies for the use, allocation, or distribution of the planning fund; and recommends special studies and projects to further the effectiveness of MSW management and recovery for the State of Texas. The Advisory Council members are required by law to hold at least one meeting every three months. The meetings usually last one day and are held in Austin, Texas. Some travel reimbursement may be available.

To apply or to nominate an individual for the Advisory Council position, please complete and submit an Advisory Council application and related materials. The application and additional information is available at: <http://www.tceq.texas.gov/goto/msw/council/>.

Evaluations will be made based upon the application, materials submitted, and solid waste experience. Materials may include a resume, biography, summary of experience, list of publications, recognitions/awards, letters of reference, etc., that help demonstrate knowledge, experience and interest on MSW matters. Appointments will be made by the TCEQ's commissioners in Austin, Texas, in the Fall 2011.

The Advisory Council application and materials must be postmarked by 5:00 p.m., Friday, August 19, 2011, and delivered to Mr. Steve Hutchinson of the Waste Permits Division. If sending by regular mail, please send to: Texas Commission on Environmental Quality, Waste Permits Division, Attention: Steve Hutchinson, P.O. Box 13087, MC 126, Austin, Texas 78711-3087. If sending by overnight mail, please send to: Texas Commission on Environmental Quality, Waste Permits Division, Attention: Steve Hutchinson, 12100 Park 35 Circle, Building A, MC-126, Austin, Texas 78753. Questions regarding the Advisory Council can be directed to Mr. Hutchinson at (512) 239-6716, or e-mail address: steve.hutchinson@tceq.texas.gov.

TRD-201102641

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: July 12, 2011



Texas Ethics Commission

List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports, or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Douglas at (512) 463-5800.

Deadline: Personal Financial Statement due May 2, 2011

Virginia H. Boissonneault, 9104 Colberg Dr., Austin, Texas 78749-4156

Martin E. Braddy, 310 Briarwood, Sulphur Springs, Texas 75482

Ron Bryce, P.O. Box 2220, Red Oak, Texas 75154

Andy M. Chatham, 9804 Spirehaven Ln., Dallas, Texas 75238-3464
 John P. Dineen III, 5602 FM 877, Waxahachie, Texas 75165-8830
 Harold Duncan Jr., 4001 Jewett St., Houston, Texas 77026-5544
 Maria H. Ferrier, 526 King Richard St., San Antonio, Texas 78229-5241
 Joseph M. Grant, 4305 Overhill Dr., Dallas, Texas 75205-4328
 Charles R. Hall, 4232 Timberglenn Pl., Midland, Texas 79707-1483
 Carla S. Hoffman, 7145 Brookedge Ln., Corpus Christi, Texas 78414
 Angus Kelly McGinty, 1004 S. Saint Marys St., San Antonio, Texas 78205-3413
 Robert E. McKelvey, #1 Sunset Rd., Palestine, Texas 75801-5307
 Tom C. Mesa Jr., P.O. Box 5232, Pasadena, Texas 77508-5232
 Travis A. Morris, P.O. Box 631023, Nacogdoches, Texas 75963-1023
 Scott James Petty, 1200 State Hwy 173 N., Hondo, Texas 78861-6511
 Michael H. Schneider Jr., P.O. Box 1289, Houston, Texas 77251-1289
 Lionel Sosa, 215 Rohde Court N., Floresville, Texas 78114-6215
 Gene Stallings, 6508 County Road 43200, Powderly, Texas 75473-5320
 S. Shawn Stephens, 3841 Piping Rock Ln., Houston, Texas 77027-4033
 Amy Trost, 122 S. Moss St., Seguin, Texas 78155-5151
 William H. Watson, 5310 77th St., Lubbock, Texas 79434-2502
 Robert Greg Wilkinson, 3508 N. Fitzhugh Ave., Dallas, Texas 75204
 Stephen K. Williams, 360 County Road 105, Carthage, Texas 75633-5672
 Mark H. Wilson, P.O. Box 188, Brandon, Texas 76628-0188
Deadline: 8-Day Pre-Election Report due May 6, 2011 for Committees

James P. Lea, Richardson Firefighters Political Action Committee, 9924 Summer Sweet Dr., McKinney, Texas 75070
 TRD-201102581
 David A. Reisman
 Executive Director
 Texas Ethics Commission
 Filed: July 7, 2011

Texas Facilities Commission

Request for Proposals #303-2-20294

The Texas Facilities Commission (TFC), on behalf of the Department of Assistive and Rehabilitative Services (DARS), announces the issuance of Request for Proposals (RFP) #303-2-20294. TFC seeks a five (5) or ten (10) year lease of approximately 7,883 square feet of office space in the City of Austin, Travis County, Texas.

The deadline for questions is August 26, 2011 and the deadline for proposals is September 9, 2011 at 3:00 p.m. The award date is October 21, 2011. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Regional Leasing Assistant, Jana D. Walp, at (512) 463-3160. A copy of the RFP may be downloaded from the Electronic State Business Daily at http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=95577.

TRD-201102577
 Kay Molina
 General Counsel
 Texas Facilities Commission
 Filed: July 6, 2011

Request for Proposals #303-2-20296

The Texas Facilities Commission (TFC), on behalf of the Texas Department of Public Safety, announces the issuance of Request for Proposals (RFP) #303-2-20296. TFC seeks a five or ten year lease of approximately 23,840 square feet of office space in Montgomery or Harris County, Texas.

The deadline for questions is July 29, 2011 and the deadline for proposals is August 9, 2011 at 3:00 p.m. The award date is October 19, 2011. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Regional Leasing Assistant, Jana D. Walp, at (512) 463-3160. A copy of the RFP may be downloaded from the Electronic State Business Daily at http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=95666.

TRD-201102642
 Kay Molina
 General Counsel
 Texas Facilities Commission
 Filed: July 12, 2011

Request for Proposals #303-2-20297

The Texas Facilities Commission (TFC), on behalf of the Texas Department of Public Safety, announces the issuance of Request for Proposals (RFP) #303-2-20297. TFC seeks a five or ten year lease of approximately 23,840 square feet of office space in Fort Bend, Waller, or Harris County, Texas.

The deadline for questions is July 29, 2011 and the deadline for proposals is August 9, 2011 at 3:00 p.m. The award date is October 19, 2011. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Regional Leasing Assistant, Jana D. Walp, at (512) 463-3160. A copy of the RFP may be downloaded from the Electronic State Business Daily at http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=95673.

TRD-201102644

Kay Molina
General Counsel
Texas Facilities Commission
Filed: July 12, 2011



Request for Proposals #303-2-20298

The Texas Facilities Commission (TFC), on behalf of the Department of Public Safety Driver's License Office, announces the issuance of Request for Proposals (RFP) #303-2-20298. TFC seeks a five or ten year lease of approximately 23,840 square feet of office space in Tarrant or Dallas County, Texas.

The deadline for questions is August 1, 2011 and the deadline for proposals is August 19, 2011 at 3:00 p.m. The award date is November 1, 2011. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Regional Leasing Assistant, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=95686.

TRD-201102653
Kay Molina
General Counsel
Texas Facilities Commission
Filed: July 12, 2011



Texas FAIR Plan Association

Request for Qualifications for Adjuster Vendor Services

The Texas FAIR Plan Association, an entity created under Chapter 2211, Insurance Code, plans to issue a Request for Proposal (RFP) sometime between July 25, 2011 and August 8, 2011, in order to establish a pool of qualified adjusting firms to procure the services of licensed independent adjusting firms for the handling of residential property claims in the state of Texas.

Please monitor the Texas FAIR Plan website, www.texasfairplan.org, for the Request for Proposal and additional instructions related to submitting a response. Thank you for your interest.

TRD-201102665
Wesley Koehl
Administrative Assistant
Texas FAIR Plan Association
Filed: July 13, 2011



Texas Health and Human Services Commission

Public Notice

The Texas Health and Human Services Commission announces its intent to submit an amendment to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendment is effective September 1, 2011.

The purpose of the amendment is to modify the current reimbursement methodology in the Texas Medicaid State Plan for Case Management

for Persons with Chronic Mental Illness program. The amendment removes the annual settlement process and establishes a prospective and uniform statewide reimbursement rate. The proposed amendment has no fiscal impact.

Interested parties may obtain copies of the proposed amendment by contacting Dan Huggins, Director of Rate Analysis for Acute Care Services, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1432; by facsimile at (512) 491-1998; or by e-mail at dan.huggins@hhsc.state.tx.us. Copies of the proposals will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201102635
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: July 11, 2011



Public Notice

The Texas Health and Human Services Commission announces its intent to submit an amendment to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendment is effective September 1, 2011.

The purpose of the amendment is to modify the current reimbursement methodology in the Texas Medicaid State Plan for Rehabilitative Services for Individuals with Chronic Mental Illness program. The amendment removes the annual settlement process and establishes a prospective and uniform statewide reimbursement rate. The proposed amendment has no fiscal impact.

Interested parties may obtain copies of the proposed amendment by contacting Dan Huggins, Director of Rate Analysis for Acute Care Services, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1432; by facsimile at (512) 491-1998; or by e-mail at dan.huggins@hhsc.state.tx.us. Copies of the proposals will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201102636
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: July 11, 2011



Public Notice

The Texas Health and Human Services Commission announces its intent to submit amendments to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendments are effective September 1, 2011.

The purpose of the amendments is to modify the reimbursement methodology in the Texas Medicaid State Plan as a result of a Medicaid fee change for Family Planning Services.

The proposed amendments are estimated to result in a fiscal impact of \$(257,691) for federal fiscal year (FFY) 2011, with approximately \$(25,769) in federal funds and \$(231,922) in State General Revenue (GR). For FFY 2012, the estimated fiscal impact is \$(3,335,966), with approximately \$(333,597) in federal funds and \$(3,002,369) in GR.

Interested parties may obtain copies of the proposed amendments by contacting Dan Huggins, Director of Rate Analysis for Acute Care Services, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1432; by facsimile at (512) 491-1998; or by e-mail at dan.huggins@hhsc.state.tx.us. Copies of the proposals will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201102660

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: July 13, 2011

Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by BLOOMINGTON COMPENSATION INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Bloomington, Minnesota.

Application to change the name of CUNA MUTUAL INSURANCE SOCIETY to CMFG LIFE INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Waverly, Iowa.

Any objections must be filed with the Texas Department of Insurance, within 20 calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-201102666

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Filed: July 13, 2011

Texas Lottery Commission

Instant Game Number 1339 "Green and Gold"

The Texas Lottery Commission previously filed for publication Instant Game Number 1339, "Green and Gold." The document was published in the May 6, 2011, issue of the *Texas Register* (36 TexReg 3046). Section 2.3.D is revised, as set forth below, updating with the new language adopted by recent legislation. No other sections are affected by this revision.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. a sufficient amount from the winnings of a prize winner who has been finally determined to be:
 - a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
 - b. in default on a loan made under Chapter 52, Education Code; or
 - c. in default on a loan guaranteed under Chapter 57, Education Code; and
2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

TRD-201102658

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: July 13, 2011

Instant Game Number 1340 "\$5,000 Winnings"

The Texas Lottery Commission previously filed for publication Instant Game Number 1340, "\$5,000 Winnings." The document was published in the May 6, 2011, issue of the *Texas Register* (36 TexReg 3050). Section 2.3.D is revised, as set forth below, updating with the new language adopted by recent legislation. No other sections are affected by this revision.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. a sufficient amount from the winnings of a prize winner who has been finally determined to be:
 - a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
 - b. in default on a loan made under Chapter 52, Education Code; or
 - c. in default on a loan guaranteed under Chapter 57, Education Code; and
2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

TRD-201102659

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Filed: July 13, 2011

Texas Parks and Wildlife Department

Notice of Proposed Real Estate Transactions

Purchase of Land - Yoakum Dunes Preserve, Yoakum County

In a meeting on August 25, 2011 the Texas Parks and Wildlife Commission (the Commission) will consider purchasing approximately 480 acres adjacent to Yoakum Dunes Preserve, Yoakum County. At this meeting, the public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Corky Kuhlmann, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at corky.kuhlmann@tpwd.state.tx.us or through the TPWD website at tpwd.state.tx.us.

Purchase of Land - Galveston Island State Park, Galveston County

In a meeting on August 25, 2011 the Texas Parks and Wildlife Commission (the Commission) will consider purchasing approximately 3.6 acres adjacent to Galveston Island State Park, Galveston County. At this meeting, the public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to

Corky Kuhlmann, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at corky.kuhlmann@tpwd.state.tx.us or through the TPWD website at tpwd.state.tx.us.

Transfer of State Historic Site - Sebastopol House State Historic Site, Guadalupe County

In a meeting on August 25, 2011 the Texas Parks and Wildlife Commission (the Commission) will consider the transfer of the Sebastopol State Historic Site, including the historic 1856 Sebastopol House and 2.2 acres, to the City of Seguin. At this meeting, the public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Ted Hollingsworth, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at ted.hollingsworth@tpwd.state.tx.us or through the TPWD website at tpwd.state.tx.us.

TRD-201102654

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Filed: July 12, 2011



Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on July 8, 2011, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Comcast of Houston, LLC for Amendment to State-Issued Certificate of Franchise Authority, Project Number 39576.

The requested amendment is to expand the service area footprint to include all the areas within the boundaries of Hitchcock and Pasadena, Texas, including any future annexations.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll free) (800) 735-2989. All inquiries should reference Project Number 39576.

TRD-201102650

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: July 12, 2011



Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on July 11, 2011, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Cebridge Acquisition, L.P. d/b/a Suddenlink Communications for Amendment to a State-Issued Certificate of Franchise Authority, Project Number 39577.

The requested amendment is to expand the service area footprint to include the municipality of Big Spring, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll free) (800) 735-2989. All inquiries should reference Project Number 39577.

TRD-201102651

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: July 12, 2011



Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on July 11, 2011, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Marcus Cable Associates, L.L.C. d/b/a Charter Communications for Amendment to a State-Issued Certificate of Franchise Authority, Project Number 39578.

The requested amendment is to expand the service area footprint to include the municipality of Duncanville, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll free) (800) 735-2989. All inquiries should reference Project Number 39578.

TRD-201102652

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: July 12, 2011



Notice of Application for Waiver from Requirements in Automatic Dial Announcing Devices (ADAD) Application Form

Notice is given to the public of an application filed on July 5, 2011, with the Public Utility Commission of Texas (commission) for waiver from the requirements in the commission prescribed application for a permit to operate automatic dial announcing devices.

Docket Style and Number: Request of Windham Professionals, Inc. for an Exception to the ACTA Registration Number Requirement, Docket Number 39564.

The Application: Windham Professionals, Inc. (Windham) filed a request for a waiver of the registration number requirement in the Public Utility Commission of Texas prescribed application for a permit to op-

erate automatic dial announcing devices (ADAD). Specifically, the application requires the Federal Registration Number issued to the ADAD manufacturer or programmer either by the Federal Communications Commission (FCC) or Administrative Council Terminal Attachments (ACTA).

Windham offers a hosted services solution provided by LiveVox. Windham represented that LiveVox does not currently hold an FCC/ACTA registration number. Furthermore, LiveVox believes that its system does not require ACTA registration because there is no equipment within the LiveVox system that connects to the public switched telephone network (PSTN) in a manner covered by the applicable regulations.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 39564.

TRD-201102627

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: July 11, 2011

Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on July 8, 2011, to amend a certificate of convenience and necessity for a proposed transmission line in Wichita County, Texas.

Docket Style and Number: Application of Oncor Electric Delivery Company to Amend a Certificate of Convenience and Necessity for a Proposed 345-kV Transmission Line in Wichita County. Docket Number 39524.

The Application: The application of Oncor for a proposed 115-kV transmission line in Wichita County, Texas is designated as the Oklaunion-Fisher Road 345-kV Transmission Line Project. The proposed project is presented with a preferred route and 66 alternate routes. Any route presented in the application could, however, be approved by the commission. Depending on the route chosen, the proposed line will be approximately 6.6 to 13.6 miles in length. The proposed project will be constructed on single-pole double-circuit steel structures. The total estimated cost for the Project is \$8,400,000 to \$16,709,000, depending on the route chosen.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. The deadline for intervention in this proceeding is August 22, 2011. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All comments should reference Docket Number 39524.

TRD-201102629

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: July 11, 2011

Request for Comments on Economic Criteria for a Certificate of Convenience and Necessity for an Electric Transmission Project

The Public Utility Commission of Texas (commission) requests comments on questions relating to the rulemaking implementing provisions of House Bill 971 (HB 971), adopted during the 82nd Legislature, Regular Session in 2011. Project Number 39537, *Rulemaking Proceeding to Implement HB 971, Relating to Economic Criteria for a Certificate of Convenience and Necessity for an Electric Transmission Project*, has been established for this proceeding.

HB 971 directs the commission to establish criteria for granting a certificate for convenience and necessity (CCN) for a transmission project in the Electric Reliability Council of Texas (ERCOT) power region, that is not necessary to meet state or federal reliability standards, and that does not serve a competitive renewable energy zone. The criteria must include a comparison of the estimated cost of the transmission project and the estimated cost savings that may result from the transmission project.

The commission requests comments on the following questions:

1. Should the commission use ERCOT's tests (*i.e.*, criteria for evaluating economic transmission projects as described in the ERCOT Nodal Protocols Sections 3.11.2(4) - 3.11.2(7)) to evaluate a CCN application for an economic transmission project? If not, why not?
2. Should the commission use ERCOT's tests (*i.e.*, criteria for evaluating economic transmission projects as described in the ERCOT Nodal Protocols Sections 3.11.2(4) - 3.11.2(7)), with modifications, to evaluate a CCN application for an economic transmission project? If so, what modifications to ERCOT's tests should be made?
3. Should the commission use tests that are different from ERCOT's tests (*i.e.*, criteria for evaluating economic transmission projects as described in the ERCOT Nodal Protocols Sections 3.11.2(4) - 3.11.2(7)) to evaluate a CCN application for an economic transmission project? If so, what tests should the commission use and why should those tests be used?
4. Should the commission use a test to evaluate a CCN application for an economic transmission project that requires the accumulated estimated benefits of the proposed project exceed the estimated cost of the project within a specified number of years?
5. If the commission considers the estimated benefits of a proposed transmission project determined from tests performed at ERCOT, should the commission require that the tests be performed again if a certain amount of time has passed from the previous test? If so, what amount of time should pass before the test is performed again?

Comments may be filed by submitting 16 copies to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, Austin, Texas 78711-3326. Initial comments may be submitted by Monday, August 1, 2011 and reply comments may be submitted by Friday, August 5, 2011. All comments should reference Project Number 39537.

Questions concerning Project Number 39537 should be referred to Jason Haas, Legal Division, at (512) 936-7295 or Mike Lee, Infrastructure and Reliability Division, at (512) 936-7348. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-201102663

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 13, 2011



Request for Comments on Form for Distribution Cost Recovery Factor (DCRF)

The Public Utility Commission of Texas (commission) requests comments on its proposed application form for a distribution cost recovery factor (DCRF) or DCRF update. The proposed form can be found on the commission's website home page under "Filings," using Control Number 39466. The form would be used by electric utilities to apply for a DCRF or DCRF update under the DCRF rule that the commission is proposing in Project Number 39465.

Comments on the proposed form may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue,

P.O. Box 13326, Austin, Texas 78711-3326. Sixteen copies of comments on the form are required to be filed. Initial comments on the form are due Monday, August 8, 2011, and reply comments are due Friday, August 12, 2011. Comments should be organized in a manner consistent with the organization of the form. All comments should refer to Project Number 39466.

The commission staff may conduct a workshop on the form, if requested, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Monday, August 15, 2011. The request for a workshop must be received by Monday, August 8, 2011.

Questions concerning Project Number 39466 should be directed to Mr. Darryl Tietjen, Rate Regulation Division at (512) 936-7436. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

PUBLIC UTILITY COMMISSION OF TEXAS

**APPLICATION FORM FOR
DISTRIBUTION COST RECOVERY FACTOR (DCRF) OR DCRF
UPDATE**

2011

DCRFApplication Form

1

SUBJECT

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Attached Sample Forms

DEFINITION OF TERMS AND ACRONYMS

DCRF	Distribution Cost Recovery Factor
DCRF-RFP	DCRF Rate Filing Package
DSP	Distribution Service Provider
FERC	Federal Energy Regulatory Commission
IOU	Investor-Owned Utility
IOU T&DCOS-RFP	Investor-Owned Transmission & Distribution Utility Cost-of-Service Rate Filing Package
PUC	Public Utility Commission of Texas
ROR	Rate of Return

GENERAL INSTRUCTIONS FOR DCRF-RFP

1. **Chart of accounts:** Unless otherwise indicated, the information required in this filing will be taken from the accounts and records prescribed in the Federal Energy Regulatory Commission (FERC) chart of accounts.
2. **Testimony:** The Distribution Service Provider (DSP) shall provide direct testimony that includes adopting the required schedules and workpapers. Testimony shall also include a list of the completed distribution projects being proposed for addition to rate base, in-service dates, and descriptions of all projects greater than \$100,000. Data and workpapers shall be provided in native electronic format including active EXCEL workbooks and all linked workbooks for all tables, figures, and attachments in the testimony.
3. **Eligible costs and return:** Only costs and return calculated in compliance with Substantive Rule 25.243 are eligible for recovery.
4. **DCRF-RFP:** The applicable general instructions and the detailed instructions specific to each schedule from the IOU T&DCOS-RFP shall apply to the preparation of an application. If there is a conflict between the instructions contained in the DCRF-RFP and the IOU T&DCOS-RFP, the instructions in this DCRF-RFP shall control.
5. **Schedule format:** Schedules B-1, B-5, and E-1, which require information by FERC account, and Schedules A, E-2, E-3, H, and J shall be prepared as in the attached sample forms. The DSP may add columns if necessary. Workpapers for each schedule shall be provided in electronic native format.

Note 1: The DSP shall provide workpapers for the additions in each year per FERC account and the details for exclusion of indirect corporate costs and capitalized O&M costs. The workpapers should explain the criteria used to identify the excluded costs.

Note 2: The DSP shall provide workpapers that detail retirements and other adjustments for each year per FERC account, including an explanation for (and associated workpapers showing) how any amounts booked to a non-distribution account (e.g., 303, 352, 353, 391, and 397) were determined to be distribution-related.

Note 3: The DSP shall provide workpapers to support the allocation methods used to derive the amounts included, the derivation of all class allocation factors by FERC account, and the billing unit updates. Workpapers for the class allocation factors and weather adjustments shall be provided in electronic spreadsheet format with sufficient data to permit replication of the adjustment.

Note 4: The DSP shall provide the most recent earnings monitoring report filed by the electric utility pursuant to Substantive Rule 25.73(b). Workpapers for the earnings monitoring report, and any updates to the earnings report, shall include sufficient underlying data to review adjustments to the earnings results. The earnings monitoring report, any proposed

adjustments, updates, and workpapers shall be provided in native electronic format, including active EXCEL workbooks and all linked workbooks.

9. Approved DCRF Schedules: The DSP shall provide a copy of the distribution schedules or amounts approved in its last comprehensive base-rate proceeding. The amounts in the first column in schedules in the DCRF-RFP should tie to those schedules or amounts. The DSP shall provide a comparison that summarizes the DCRF and DCRF updates approved by the PUC since the DSP's last comprehensive base-rate proceeding, shown for each proceeding and on a cumulative basis.

10. Tariff: The DSP shall provide a tariff to reflect its DCRFs. The proposed DCRF for each rate class shall be calculated using the following formula:

[(change in net distribution plant * after tax ROR) + (change in annual distribution depreciation expense, taxes other than income taxes and income taxes associated with the return on rate base)] * (the class share of the allocated distribution plant approved in the last base rate case) – [(% change in the class' billing determinants from the last base-rate case * the sum of that class' distribution-related federal income taxes, ad valorem taxes, revenue-based state margin (franchise) taxes, distribution-related depreciation expense, and the distribution-related return on invested capital approved in the last base rate case)] / [the class annual billing determinants (kWh or kW or kVa) for the 12 months ending on the date used for purposes of determining the revised capital investment]

$$\frac{[(\text{DIC}_C - \text{DIC}_{RC}) * \text{ROR}_{AT}] + (\text{DEPR}_C - \text{DEPR}_{RC}) + (\text{FIT}_C - \text{FIT}_{RC}) + (\text{OT}_C - \text{OT}_{RC})}{\text{CLASS}} * \frac{\text{ALLOC}_{\text{CLASS}} - [(\text{BD}_{C-\text{CLASS}} - \text{BD}_{RC-\text{CLASS}}) / \text{BD}_{RC-\text{CLASS}}] * (\text{FIT}_{RC-\text{CLASS}} + \text{OT}_{RC-\text{CLASS}} + \text{DEPR}_{RC-\text{CLASS}} + \text{ROIC}_{RC-\text{CLASS}})]}{\text{BD}_{C-\text{CLASS}}}$$

Where:

DIC_C = Current Net Distribution Invested Capital.

DIC_{RC} = Net Distribution Invested Capital from the last comprehensive base-rate proceeding.

ROR_{AT} = After-tax Rate of Return as defined in paragraph (2) of this subsection.

DEPR_C = Current Depreciation Expense, as related to Current Net Distribution Invested Capital, calculated using the currently approved depreciation rates.

DEPR_{RC} = Depreciation Expense, as related to Net Distribution Invested Capital, from last comprehensive base-rate proceeding.

FIT_C = Current Federal Income Tax, as related to Current Net Distribution Invested Capital, including the change in federal income taxes related to the change in return on rate base and synchronization of interest associated with the change in rate base

resulting from additions to and retirements of distribution plant as used to compute Net Distribution Invested Capital.

FIT_{RC} = Federal Income Tax, as related to Net Distribution Invested Capital from last comprehensive base-rate proceeding.

OT_C = Current Other Taxes (taxes other than income taxes and taxes associated with the return on rate base), as related to Current Net Distribution Invested Capital, calculated using current tax rates and the methodology from the last comprehensive base-rate proceeding, and does not include municipal franchise fees.

OT_{RC} = Other Taxes, as related to Net Distribution Invested Capital from last comprehensive base-rate proceeding, and does not include municipal franchise fees.

$ALLOC_{CLASS}$ = Rate Class Allocation Factor from last comprehensive base-rate proceeding, calculated as: total distribution net plant allocated to rate class, divided by total net distribution plant. For situations in which data from the last comprehensive base-rate proceeding are not available to perform the described calculation, the Rate Class Allocation Factor shall be calculated as the total distribution revenue requirement allocated to the rate class (less any identifiable amounts explicitly unrelated to Distribution Invested Capital) divided by the total distribution revenue requirement (less any identifiable amounts explicitly unrelated to Distribution Invested Capital) for all classes as approved by the PUC in the electric utility's last comprehensive base-rate case.

$BD_{C-CLASS}$ = Rate Class Billing Determinants (weather-normalized and adjusted to reflect the number of customers at the end of the period) for the 12 months ending on the date used for purposes of determining the Current Net Distribution Invested Capital. For customer classes billed primarily on the basis of kilowatt-hour billing determinants, the DCRF shall be calculated using kilowatt-hour billing determinants. For customer classes billed primarily on the basis of demand billing determinants, the DCRF shall be calculated using demand billing determinants.

$BD_{RC-CLASS}$ = Billing Determinants (weather-normalized and adjusted to reflect the number of customers at the end of the period) for the rate class used to set rates in the last comprehensive base-rate proceeding. For customer classes billed primarily on the basis of kilowatt-hour billing determinants, the DCRF shall be calculated using kilowatt-hour billing determinants. For customer classes billed primarily on the basis of demand billing determinants, the DCRF shall be calculated using demand billing determinants.

$FIT_{RC-CLASS}$ = Federal Income Taxes for the rate class, as related to Net Distribution Invested Capital from the last comprehensive base-rate proceeding.

$OT_{RC-CLASS}$ = Other Taxes for the rate class, as related to Net Distribution Invested Capital from the last comprehensive base-rate proceeding, and does not include municipal franchise fees.

$DEPR_{RC-CLASS}$ = Depreciation Expense for the rate class, as related to Net Distribution Invested Capital from the last comprehensive base-rate proceeding.

$ROIC_{RC-CLASS}$ = Return on Net Distribution Invested Capital for the rate class from the last comprehensive base-rate proceeding.

11. **Attached Forms:** Certain schedule titles are followed by “(see attached form).” Where such a notation appears, the format for the schedule is provided and shall be followed.

LIST OF REQUIRED SCHEDULES

Schedule A: Summary of Distribution Cost of Service (DCOS) (see attached form)

This schedule shall summarize the DSP's DCOS approved in its last comprehensive base-rate proceeding including, but not limited to, non-fuel operations and maintenance expenses, depreciation expenses, federal income taxes, if applicable, and taxes other than income taxes. It shall also summarize the change in return and depreciation expense due to the net additions to the distribution-related plant (FERC accounts 303, 352, 353, 360-374, 391, and 397).

Schedule B: Summary of Distribution Rate Base (see attached form)

This schedule shall summarize the DSP's historical distribution rate base approved in its last comprehensive base-rate proceeding. It shall also summarize the change in rate base and return on rate base due to the net additions to the distribution-related plant (FERC accounts 303, 352, 353, 360-374, 391, and 397).

Schedule B-1: Distribution Plant-Gross (see attached form)

This schedule shall summarize distribution-related plant by FERC accounts 303, 352, 353, 360-374, 391, and 397 starting at the end of the test year from the last comprehensive base-rate proceeding through the update period. The amounts in this schedule shall tie to the book balances as of the end of each reporting period included in the update period. Supporting workpapers that fully and clearly explain the additions, adjustments, and retirements summarized in this schedule shall be provided.

Schedule B-5: Distribution Accumulated Depreciation (see attached form)

This schedule shall include the accumulated provisions for depreciation detailed by distribution-related plant FERC accounts 303, 352, 353, 360-374, 391, and 397 starting at the end of the test year from the last comprehensive base-rate proceeding. Supporting workpapers shall be provided that fully and clearly explain the changes in the accumulated depreciation over the update period. The amounts reported in this schedule shall tie to the book balances as of the end of each reporting period included in the update period.

Schedule E-1: Distribution Depreciation Expense (see attached form)

This schedule shall include the change in depreciation expense detailed by distribution-related plant FERC accounts 303, 352, 353, 360-374, 391, and 397. Depreciation rates approved in the last comprehensive base-rate proceeding shall be applied to the net plant balances at the end of update period. The amounts reported in this schedule shall tie to the book balances as of the end of each reporting period and to the amounts reported in other schedules in the DCRF-RFP.

Schedule E-2: Distribution Taxes Other Than Federal Income Taxes (see attached form)

This schedule shall include the change in ad valorem taxes, state gross margin (franchise) taxes, and other taxes associated with the change in net plant and revenue requirement.

Supporting workpapers that fully and clearly explain the methods and procedures followed to determine the additional expense shall be provided.

Schedule E-3: Distribution Federal Income Taxes (see attached form)

This schedule shall include the change in federal income taxes related to the change in return on rate base and synchronization of interest associated with the change in rate base due to additions and retirements to distribution plant.

Schedule H: Summary of Historic Year Billing Determinants (see attached form)

This schedule shall summarize the DSP's test year billing determinants from its last comprehensive base-rate proceeding, the changes associated with weather-normalization, number of customers, and the percent associated with load growth for each customer class. The updated billing unit data shall be adjusted for year-end customers and elimination of abnormal events. The summary of weather normalization shall provide the results of statistical tests associated with the normalization model and explain the DSP's evaluation of statistical criteria. Normal weather shall be based on a historical period of 10 years. The schedule shall provide information on all variables used in the weather model and an explanation for the variables selected.

Schedule J: Rate Design (see attached form)

This schedule shall include, for each customer class, class allocation for the allocated distribution plant approved in the last comprehensive base-rate proceeding and the billing determinants (Schedule H) consistent with the type of units used to design the rates from the last comprehensive base-rate proceeding. Allocation factor data shall be provided in sufficient detail to show class shares of distribution rate base components. Billing determinants shall be for the 12 months ending on the same date used to determine the changes in invested capital used in this application adjusted for load growth.

Attached Forms:

- Schedule A
- Schedule B
- Schedule B-1
- Schedule B-5
- Schedule E-1
- Schedule E-2
- Schedule E-3
- Schedule H
- Schedule J
- Schedule K—most recent PUC earnings monitoring report

Schedule A

Schedule A : Summary of Distribution Cost of Service (DCOS)

Distribution Cost Recovery Factor XXX Utility Update Period DD/MM/YY - DD/MM/YY					
Line No.	Description	Total Approved Docket No. xxxxxx Final Order (1)	Annual Change (2)	Revenue Requirement (3) = (1) + (2)	Reference Schedule
1	Operation & Maintenance , including (A&G)		N/A		Docket No. xxx E-1 E-2 E-3 B
2	Depreciation and Amortization				
3	Taxes Other Than Income Taxes				
4	Federal Income Tax				
5	Return on Rate Base				
6	Total Revenue Requirement				
7	Other Revenues		N/A		
8	Total	\$0	\$0	\$0	

Schedule-A

Schedule B

Schedule B: Summary of Distribution Rate Base

Distribution Rate Base XXX Utility Update Period DD/MM/YY - DD/MM/YY					
Line No.	Description	Balance Approved per Docket No. xxxxxx Final Order (1)	Balance as of end of update period (2)	Increase in Rate Base & Return (3) = (2) - (1)	Reference Schedules
1	Direct Assigned:				
2	Original Plant In Service				B-1
3	(Accumulated Depreciation)				B-5
3	Net Plant In Service	0	0	0	
4	Allocated Plant Accounts- Net *				Docket No. xxx
5	CWIP *				Docket No. xxx
6	Working Capital *				Docket No. xxx
7	Plant Held for Future Use *				Docket No. xxx
8	Reserve for Insurance *				Docket No. xxx
9	Other *				Docket No. xxx
10	Subtotal	0	0	0	
11	Total Rate Base	0	0	0	
12	Rate of Return *				Docket No. xxx
13	Return on Rate Base	\$0	\$0	\$0	

* Same as that approved in last comprehensive base-rate case.

Schedule-B

Schedule B-1

Schedule B-1: Distribution Plant

Distribution Plant XXXX Utility Update Period DD/MM/YY-DD/MM/YY							
Line No.	Account No.	Description	Reference Schedule Worksheet	Balance approved in Docket No. xxxxx (1)	Additions in period (2)	Retirements/Adjustments in period (3)	Balance in period (4) = (1)+(2)-(3)
1		Distribution Intangible Plant					
	A303	Miscellaneous Intangible Plant					
2		Transmission Plant					
3	A352	Structures and improvements					
4	A353	Station Equipment					
		Sub-Total		0	0	0	0
5		Distribution Plant					
6	A360	Land and Land Rights					
7	A361	Structures and Improvements					
8	A362	Station Equipment					
9	A363	Storage Battery Equipment					
10	A364	Poles, Towers & Fixtures					
11	A365	O.H. Conductors & Devices					
12	A366	Underground Conduits					
13	A367	U.G. Conductors & Devices					
14	A368	Line Transformers					
15	A369	Services					
16	A370	Meters					
17	A371	Install. on Customer Prem.					
18	A372	Leased Prop. on Cust. Premises					
19	A373	Street Lights					
20	A374	Asset Retirement Costs - Distr. Plant		0	0	0	0
		Sub-Total					
21		General Plant					
22	A391	Office furniture and equipment					
	A397	Communication Equipment					
		Sub-Total		0	0	0	0
23		TOTAL		\$0	\$0	\$0	\$0

Schedule B-5

Schedule B-5: Distribution Accumulated Depreciation

Distribution Accumulated Depreciation XXX Utility Update Period DD/MM/YY-DD/MM/YY							
Line No.	Account No.	Description	Reference Schedule Worksheet	Balance approved in Docket No. xxxxx (1)	Depreciation Expense in period (2)	Retirements/Adjustments in period (3)	Balance in period (4) = (1) + (2) + (3)
1	Accumulated Depreciation Distribution Intangible Plant A303 Miscellaneous Intangible Plant						
2	Transmission Plant						
3	A352	Structures and improvements					
4	A353	Station Equipment					
		Sub-Total		0	0	0	0
5	Distribution Plant						
6	A360	Land and Land Rights					
7	A361	Structures and Improvements					
8	A362	Station Equipment					
9	A363	Storage Battery Equipment					
10	A364	Poles, Towers & Fixtures					
11	A365	O.H. Conductors & Devices					
12	A366	Underground Conduits					
13	A367	U.G. Conductors & Devices					
14	A368	Line Transformers					
15	A369	Services					
16	A370	Meters					
17	A371	Install. on Customer Prem.					
18	A372	Leased Prop. on Cust. Premises					
19	A373	Street Lights					
20	A374	Asset Retirement Costs - Distr. Plant		0	0	0	0
		Sub-Total					
21	General Plant						
22	A391	Office furniture and equipment		0	0	0	0
	A397	Communication Equipment		0	0	0	0
		Sub-Total		0	0	0	0
23		TOTAL		\$0	\$0	\$0	\$0

Schedule-B-5

Schedule E-1: Distribution Depreciation Expense

Distribution Depreciation Expense XXX Utility Change in Depreciation Expense Update Period MM/DD/YY-MM/DD/YY										
Line No.	Account No.	Description	Reference Schedule Worksheet	Depreciation Expense approved in Docket No. xxxxx (1)	Gross Plant Balance as of mm/dd/yyyy Per D-xxxxx (2)	Gross Plant Balance at mm/dd/yyyy including Requested Additions (3)	Increase in Gross Plant Balance (Requested Additions) (4) = (3) - (2)	Depreciation rate approved in Docket No. xxxxx (5)	Additional Depreciation Expense on Gross Plant Additions (6) = (4) * (5)	Total Depreciation Expense (7) = (1) + (6)
Depreciation Expense										
Distribution Intangible Plant										
1	A303	Miscellaneous Intangible Plant								
Transmission Plant										
2	A352	Structures and improvements								
3	A353	Station Equipment								
4		Sub-Total		0	0	0	0	0	0	0
Distribution Plant										
5	A360	Land and Land Rights								
6	A361	Structures and Improvements								
7	A362	Station Equipment								
8	A363	Storage Battery Equipment								
9	A364	Poles,Towers & Fixtures								
10	A365	O.H. Conductors & Devices								
11	A366	Underground Conduits								
12	A367	U.G. Conductors & Devices								
13	A368	Line Transformers								
14	A369	Services								
15	A370	Meters								
16	A371	Install. on Customer Prem.								
17	A372	Leased Prop. on Cust. Premises								
18	A373	Street Lights								
19	A374	Asset Retirement Costs - Distr. Plant		0	0	0	0		0	0
20		Sub-Total								
General Plant										
21	A391	Office furniture and equipment								
22	A397	Communication Equipment		0	0	0	0		0	0
		Sub-Total		0	0	0	0	0	0	0
23		TOTAL		0	0	0	0		0	0

Schedule E-2

Schedule E-2: Summary of Distribution Taxes Other Than Income Taxes

Distribution Taxes Other Than Income Taxes XXXX Utility Change in Other Taxes Update Period MM/DD/YY-MM/DD/YY						
Line No.	FERC Account	Account Description	Schedule / Workpaper Reference	Total Approved per Docket xxxxx (1)	Annual Increase (2)	Balance at mm/dd/yyyy (3) = (1) + (2)
		Taxes Other Than Income Taxes:				
1		Ad Valorem Taxes				
2		Payroll Taxes			N/A	
3		State Gross Margin (Franchise) Tax				
4		Other				
5		Total Taxes Other Than FIT Taxes		\$0	\$0	\$0

Schedule-E-2

Schedule E-3

Schedule E-3: Summary of Distribution Federal Income Taxes

Distribution Federal Income Taxes XXX Utility Change in Federal Taxes Update Period MM/DD/YY-MM/DD/YY					
Line No.	Account Description	Reference Schedule	Amount Approved per Docket XXXX (1)	Interim Annual Change (2)	Balance at MM/DD/YYYY (3) = (1) + (2)
1	Federal Income Taxes	Schedule B			
2					
3	Return on Rate Base				
4					
5	Deductions:				
6	Synchronized Interest				
7	ITC Amortization				
8	Amortization of Protected Excess DFIT				
9	Amortization of Non-protected Excess DFIT				
10	Amortization of Reserved Non Ratable Net Excess				
11	Depletion				
12	Other				
13	Subtotal		0	0	0
14					
15	Additions:				
16	Depreciation Adjustment				
17	Other Permanent Additions				
18	Subtotal		0	0	0
19					
20					
21	Taxable Component of Return		0	0	0
22	Tax Factor		53.846154%	53.846154%	53.846154%
23					
24	Federal Income Taxes Before Adjust.				
25					
26	Tax Credits-Deduct				
27	ITC Amortization				
28	Amortization of protected excess DFIT				
29	Amortization of excess deferred taxes				
30	Amortization of reserved non-ratable net excess				
31					
32					
33	TOTAL FEDERAL INCOME TAXES		\$0	\$0	\$0

Schedule E-3

Schedule H: Distribution Revenues, Sales and Customer Data

Distribution Cost Recovery Factor
XXX Utility
Update Period DD/MM/YY - DD/MM/YY

LINE	DESCRIPTION	Billing Unit Type (1)	Reference Schedule Worksheet	Billing units approved in Docket No. xxx (2)	(Update period) Unadjusted Billing Units at Meter (3)	(Update period) Billing Unit Weather Adjustment (4)	(Update period) Adjusted Billing Units at Meter (5) = (3) + (4)	(Update period) YE Customer Adjustment (6)	(Update period) Adjusted Billing Units (7) = (5) + (6)	Change in Billing Units (8) = (7) - (2)	Percent Change (9) = (8) / (2)
1		VOLT							0	0	0
2									0	0	0
4									0	0	0
8									0	0	0
9									0	0	0
10									0	0	0
11									0	0	0

Schedule J

Schedule J: Summary of Distribution Cost Recovery Factor

Distribution Cost Recovery Factor					
XXX Utility					
FOR THE PERIOD OF MM/DD/YYYY					
Summary of Revenue Requirement by Class					
Class	Cumulative PRA Revenue Schedule A	(Plus/Minus) Weather/Customer Adjustment	Adjusted Cumulative PRA Revenues	Billing Units	Rate (\$)
Residential					
Small Commercial					
General Service					
Large Power					
Small Industrial					
Industrial					

TRD-201102628
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 11, 2011

◆ ◆ ◆
Texas Department of Savings and Mortgage Lending

Notice of Application for Change of Control of a State Savings Bank

Notice is hereby given that on June 30, 2011, application was filed with the Savings and Mortgage Lending Commissioner of Texas for change of control of Third Coast Bank, SSB, Humble, Texas, by Avant Global Holdings LLC.

This application is filed pursuant to 7 TAC §§75.121 - 75.127 of the Rules and Regulations Applicable to Texas Savings Banks. These rules are on file with the Office of the Secretary of State, Texas Register Division, or may be seen at the Department's offices in the Finance Commission Building, 2601 North Lamar, Suite 201, Austin, Texas 78705.

TRD-201102645
Douglas B. Foster
Commissioner
Texas Department of Savings and Mortgage Lending
Filed: July 12, 2011

◆ ◆ ◆
South Texas Development Council

Notice of Request for Proposals

The South Texas Development Council's (STDC) Community Services Program is seeking request for proposals from potential contractors to Home Inspections (i.e. Initial Inspection, Initial Inspection and Audit Report, Final Inspection, Disqualified/Previously Weatherized Unit, and Cost per day for TDHCA Monitoring Visits) for the Weatherization Assistance Program in the area of Jim Hogg, Starr, and Zapata Counties. Interested contractors may contact Jose Conde, Regional Services Planner, at (956) 722-3995 or via email at jconde@stdc.cog.tx.us in order to obtain a packet containing instructions and specifications for proposals.

Proposals will be opened in the presence of witnesses on July 21, 2011 at 11:00 a.m. in the conference room of the STDC Main Office located at 1002 Dickey Lane, Laredo, Texas 78043. All proposals must be received at the STDC main office by May 20, 2011 at 5:00 p.m. to be considered in the proposal process. If selected, STDC shall award a contract for one year with an option to renew for four additional years.

STDC reserves the right to reject any and all bids. STDC is an equal opportunity employer. Funding provided by the Department of Energy and Department of Health and Human Services. Awarded contracts are subject to Davis Bacon and Related Acts requirements.

TRD-201102613
Jose Conde
Regional Services Planner
South Texas Development Council
Filed: July 8, 2011

◆ ◆ ◆
Supreme Court of Texas

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 11-9126

FINAL APPROVAL OF AMENDMENTS TO RULES 18a AND 18b OF THE TEXAS RULES OF CIVIL PROCEDURE

ORDERED that:

1. Pursuant to Section 22.004 of the Texas Government Code, the Supreme Court of Texas amends Rules 18a and 18b of the Texas Rules of Civil Procedure as follows.

2. By Order dated April 11, 2011, in Misc. Docket No. 11-9064, the Court proposed amendments to Rules 18a and 18b of the Texas Rules of Civil Procedure and invited public comment. Following public comment, the Court made additional revisions to the rules. This Order contains the final version of amended Rules 18a and 18b that take effect August 1, 2011.

3. The Clerk is directed to:

- a. file a copy of this Order with the Secretary of State;
- b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
- c. send a copy of this Order to each elected member of the Legislature; and
- d. submit a copy of the Order for publication in the *Texas Register*.

Dated: July 5, 2011.

Wallace B. Jefferson, Chief Justice

Nathan L. Hecht, Justice

Dale Wainwright, Justice

David M. Medina, Justice

Paul W. Green, Justice

Phil Johnson, Justice

Don R. Willett, Justice

Eva M. Guzman, Justice

Debra H. Lehrmann, Justice

Rule 18a. Recusal and Disqualification of Judges

(a) *Motion; Form and Contents.* A party in a case in any trial court other than a statutory probate court or justice court may seek to recuse or disqualify a judge who is sitting in the case by filing a motion with the clerk of the court in which the case is pending. The motion:

- (1) must be verified;
- (2) must assert one or more of the grounds listed in Rule 18b;

(3) must not be based solely on the judge's rulings in the case; and

(4) must state with detail and particularity facts that:

(A) are within the affiant's personal knowledge, except that facts may be stated on information and belief if the basis for that belief is specifically stated;

(B) would be admissible in evidence; and

(C) if proven, would be sufficient to justify recusal or disqualification.

(b) *Time for Filing Motion.*

(1) Motion to Recuse. A motion to recuse:

(A) must be filed as soon as practicable after the movant knows of the ground stated in the motion; and

(B) must not be filed after the tenth day before the date set for trial or other hearing unless, before that day, the movant neither knew nor reasonably should have known:

(i) that the judge whose recusal is sought would preside at the trial or hearing; or

(ii) that the ground stated in the motion existed.

(2) Motion to Disqualify. A motion to disqualify should be filed as soon as practicable after the movant knows of the ground stated in the motion.

(c) *Response to Motion.*

(1) By Another Party. Any other party in the case may, but need not, file a response to the motion. Any response must be filed before the motion is heard.

(2) By the Respondent Judge. The judge whose recusal or disqualification is sought should not file a response to the motion.

(d) *Service of Motion or Response.* A party who files a motion or response must serve a copy on every other party. The method of service must be the same as the method of filing, if possible.

(e) *Duty of the Clerk.*

(1) Delivery of a Motion or Response. When a motion or response is filed, the clerk of the court must immediately deliver a copy to the respondent judge and to the presiding judge of the administrative judicial region in which the court is located ("the regional presiding judge").

(2) Delivery of Order of Recusal or Referral. When a respondent judge signs and files an order of recusal or referral, the clerk of the court must immediately deliver a copy to the regional presiding judge.

(f) *Duties of the Respondent Judge; Failure to Comply.*

(1) Responding to the Motion. Regardless of whether the motion complies with this rule, the respondent judge, within three business days after the motion is filed, must either:

(A) sign and file with the clerk an order of recusal; or

(B) sign and file with the clerk an order referring the motion to the regional presiding judge.

(2) Restrictions on Further Action.

(A) Motion Filed Before Evidence Offered at Trial. If a motion is filed before evidence has been offered at trial, the respondent judge must take no further action in the case until the motion has been decided, except for good cause stated in writing or on the record.

(B) Motion Filed After Evidence Offered at Trial. If a motion is filed after evidence has been offered at trial, the respondent judge may proceed, subject to stay by the regional presiding judge.

(3) Failure to Comply. If the respondent judge fails to comply with a duty imposed by this rule, the movant may notify the regional presiding judge.

(g) *Duties of Regional Presiding Judge.*

(1) Motion. The regional presiding judge must rule on a referred motion or assign a judge to rule. If a party files a motion to recuse or disqualify the regional presiding judge, the regional presiding judge may still assign a judge to rule on the original, referred motion. Alternatively, the regional presiding judge may sign and file with the clerk an order referring the second motion to the Chief Justice for consideration.

(2) Order. The ruling must be by written order.

(3) Summary Denial for Noncompliance.

(A) Motion to Recuse. A motion to recuse that does not comply with this rule may be denied without an oral hearing. The order must state the nature of the noncompliance. Even if the motion is amended to correct the stated noncompliance, the motion will count for purposes of determining whether a tertiary recusal motion has been filed under the Civil Practice and Remedies Code.

(B) Motion to Disqualify. A motion to disqualify may not be denied on the ground that it was not filed or served in compliance with this rule.

(4) Interim Orders. The regional presiding judge or judge assigned to decide the motion may issue interim or ancillary orders in the pending case as justice may require.

(5) Discovery. Except by order of the regional presiding judge or the judge assigned to decide the motion, a subpoena or discovery request may not issue to the respondent judge and may be disregarded unless accompanied by the order.

(6) Hearing.

(A) Time. The motion must be heard as soon as practicable and may be heard immediately after it is referred to the regional presiding judge or an assigned judge.

(B) Notice. Notice of the hearing must be given to all parties in the case.

(C) By Telephone. The hearing may be conducted by telephone on the record. Documents submitted by facsimile or email, otherwise admissible under the rules of evidence, may be considered.

(7) Reassignment of Case if Motion Granted. If the motion is granted, the regional presiding judge must transfer the case to another court or assign another judge to the case.

(h) *Sanctions.* After notice and hearing, the judge who hears the motion may order the party or attorney who filed the motion, or both, to pay the reasonable attorney fees and expenses incurred by other parties if the judge determines that the motion was:

(1) groundless and filed in bad faith or for the purpose of harassment, or

(2) clearly brought for unnecessary delay and without sufficient cause.

(i) *Chief Justice.* The Chief Justice of the Supreme Court of Texas may assign judges and issue any orders permitted by this rule or pursuant to statute.

(j) *Appellate Review.*

(1) Order on Motion to Recuse.

(A) Denying Motion. An order denying a motion to recuse may be reviewed only for abuse of discretion on appeal from the final judgment.

(B) Granting Motion. An order granting a motion to recuse is final and cannot be reviewed by appeal, mandamus, or otherwise.

(2) Order on Motion to Disqualify. An order granting or denying a motion to disqualify may be reviewed by mandamus and may be appealed in accordance with other law.

Rule 18b. Grounds for Recusal and Disqualification of Judges

(a) *Grounds for Disqualification.* A judge must disqualify in any proceeding in which:

(1) the judge has served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter;

(2) the judge knows that, individually or as a fiduciary, the judge has an interest in the subject matter in controversy; or

(3) either of the parties may be related to the judge by affinity or consanguinity within the third degree.

(b) *Grounds for Recusal.* A judge must recuse in any proceeding in which:

(1) the judge's impartiality might reasonably be questioned;

(2) the judge has a personal bias or prejudice concerning the subject matter or a party;

(3) the judge has personal knowledge of disputed evidentiary facts concerning the proceeding;

(4) the judge or a lawyer with whom the judge previously practiced law has been a material witness concerning the proceeding;

(5) the judge participated as counsel, adviser, or material witness in the matter in controversy, or expressed an opinion concerning the merits of it, while acting as an attorney in government service;

(6) the judge knows that the judge, individually or as a fiduciary, or the judge's spouse or minor child residing in the judge's household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(7) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(A) is a party to the proceeding or an officer, director, or trustee of a party;

(B) is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding; or

(C) is to the judge's knowledge likely to be a material witness in the proceeding.

(8) the judge or the judge's spouse, or a person within the first degree of relationship to either of them, or the spouse of such a person, is acting as a lawyer in the proceeding.

(c) *Financial Interests.* A judge should inform himself or herself about personal and fiduciary financial interests, and make a reasonable effort to inform himself or herself about the personal financial interests of his or her spouse and minor children residing in the household.

(d) *Terminology and Standards.* In this rule:

(1) "proceeding" includes pretrial, trial, or other stages of litigation;

(2) the degree of relationship is calculated according to the civil law system;

(3) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;

(4) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party, except that:

(A) ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;

(B) an office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;

(C) the proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(D) ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities;

(E) an interest as a taxpayer or utility ratepayer, or any similar interest, is not a "financial interest" unless the outcome of the proceeding could substantially affect the liability of the judge or a person related to him within the third degree more than other judges.

(e) *Waiving a Ground for Recusal.* The parties to a proceeding may waive any ground for recusal after it is fully disclosed on the record.

(f) *Discovery and Divestiture.* If a judge does not discover that the judge is recused under subparagraphs (b)(6) or (b)(7)(B) until after the judge has devoted substantial time to the matter, the judge is not required to recuse himself or herself if the judge or the person related to the judge divests himself or herself of the interest that would otherwise require recusal.

Comment to 2011 Change: Rule 18a governs the procedure for recusing or disqualifying a judge sitting in any trial court other than a statutory probate court, justice court, or municipal court. Chapter 25 of the Government Code governs statutory probate courts, and Rule 528 governs justice courts. Under Rule 18a, a judge's rulings may not be the sole basis for a motion to recuse or disqualify the judge. But when one or more sufficient other bases are raised, the judge hearing the motion may consider evidence of rulings when considering whether to grant the motion. For purposes of this rule, the term "rulings" is not meant to encompass a judge's statements or remarks about a case.

The amendments to Rule 18b are not intended to be substantive.

TRD-201102580

Marisa Secco

Rules Attorney

Supreme Court of Texas

Filed: July 7, 2011



Texas Department of Transportation

Aviation Division - Request for Proposal for Professional Engineering Services

The City of Dallas, through its agent, the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below:

Airport Sponsor: City of Dallas. TxDOT CSJ No. 1118DALLA. Scope: Provide engineering/design services to conduct airfield pavement evaluation, including dynamic deflection testing.

The DBE goal is set at 10%. TxDOT Project Manager is Clayton Bridwell.

To assist in your proposal preparation the criteria, 5010 drawing, project diagram, and most recent airport layout plan are available online at www.txdot.gov/avn/avninfo/notice/consult/index.htm by selecting "Dallas Executive Airport."

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal." The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, (800) 68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT website at <http://www.txdot.gov/business/projects/aviation.htm>. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. A prime provider may only submit one proposal. If a prime provider submits more than one proposal, that provider will be disqualified. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

Five completed, unfolded copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than August 30, 2011, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Edie Stimach.

The consultant selection committee will be composed of Aviation Division staff members and one local government member. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluation of engineering proposals can be found at <http://www.txdot.gov/business/projects/aviation.htm>. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Edie Stimach, Grant Manager at 1-800-68-PILOT at extension 4518. For technical questions, please contact Clayton Bridwell, at 1-800-68-PILOT at extension 4531.

TRD-201102671

Bob Jackson

General Counsel

Texas Department of Transportation

Filed: July 13, 2011

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Public Hearing Notice - Statewide Transportation Improvement Program

The Texas Department of Transportation will hold a public hearing on Monday, August 15, 2011 at 10:00 a.m. at the Texas Department of Transportation, 200 East Riverside Drive, Room 1A-1, in Austin, Texas to receive public comments on the second set of July 2011 Out of Cycle Revisions to the Statewide Transportation Improvement Program (STIP) for FY 2011-2014. The STIP reflects the federally funded transportation projects in the FY 2011-2014 Transportation Improvement Programs (TIPs) for each Metropolitan Planning Organization (MPO) in the state. The STIP includes both state and federally funded projects for the nonattainment areas of Beaumont, Dallas-Fort Worth, El Paso, and Houston. The STIP also contains information on federally funded projects in rural areas that are not included in any MPO area, and other statewide programs as listed.

Title 23, United States Code, §134 and §135 require each designated MPO and the state, respectively, to develop a TIP and STIP as a condition to securing federal funds for transportation projects under Title 23 or the Federal Transit Act (49 USC §5301, et seq.). Section 134(j) requires an MPO to develop its TIP in cooperation with the state and affected public transit operators and to provide an opportunity for interested parties to participate in the development of the program. Section 135(g) requires the state to develop a STIP for all areas of the state in cooperation with the designated MPOs and, with respect to non-metropolitan areas, in consultation with affected local officials, and further requires an opportunity for participation by interested parties as well as approval by the Governor or the Governor's designee.

A copy of the proposed second set of July 2011 Out of Cycle Revisions to the FY 2011-2014 STIP will be available for review, at the time the notice of hearing is published, at each of the department's district offices, at the department's Transportation Planning and Programming Division offices located in Building 118, Second Floor, 118 East Riverside Drive, Austin, Texas, and on the department's website at:

www.txdot.gov

Persons wishing to review the second set of July 2011 Out of Cycle Revisions to the FY 2011-2014 STIP may do so online or contact the Transportation Planning and Programming Division at (512) 486-5033.

Persons wishing to speak at the hearing may register in advance by notifying Lori Morel, Transportation Planning and Programming Division, at (512) 486-5033 not later than Friday, August 12, 2011, or they may register at the hearing location beginning at 9:00 a.m. on the day of the hearing. Speakers will be taken in the order registered. Any interested person may appear and offer comments or testimony, either orally or in writing; however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any persons with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony. Persons with disabilities who have special communication or accommodation needs or who plan to attend the hearing may contact the Government and Public Affairs Division, at 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-9957. Requests should be made no later than three days prior to the hearing. Every reasonable effort will be made to accommodate the needs.

Further information on the FY 2011-2014 STIP may be obtained from Lori Morel, Transportation Planning and Programming Division, 118 East Riverside Drive, Austin, Texas, 78704, (512) 486-5033. Interested parties who are unable to attend the hearing may submit com-

ments to James L. Randall, P.E., Director, Transportation Planning and Programming Division, 118 East Riverside Drive, Austin, Texas 78704. In order to be considered, all written comments must be received at the Transportation Planning and Programming office by Monday, August 22, 2011 at 4:00 p.m.

TRD-201102672

Bob Jackson

General Counsel

Texas Department of Transportation

Filed: July 13, 2011

University of North Texas

Public Notice - Award of Major Consulting Contract

Description of Activities Consultant Will Conduct:

The selected firm will be responsible for advising, assisting, and training University of North Texas (UNT) in the Initiative for Maximizing Student Diversity (IMSD) proposal team and other UNT faculty and staff in the development of R25 grant application for submission to the National Institute of Health.

Name and Business Address of Consultant:

Integrated Learning Innovations, Inc.

55219 Broughton

Chapel Hill, NC 27517

Total Value and Beginning and Ending Dates of Contract:

Value: \$62,700

Beginning Date: June 1, 2011

Ending Date: February 15, 2012

Dates on Which Documents, Films, Recordings, or Reports that Consultant is Required to Present Are Due:

Date: Consultant is required to provide written reports and plans on various dates.

TRD-201102661

Carrie Stoeckert

Assistant Director

University of North Texas

Filed: July 13, 2011

Upper Rio Grande Workforce Development Board

Request for Proposals

The Upper Rio Grande Workforce Development Board is soliciting proposals under PY12-RFP-200-801 to obtain bids from individuals or brokers for commercial office space to serve as a workforce center located within 79924 or 79904 zip codes.

The authorized Workforce Board contact person for this procurement is Guillermo Morales II, Regulatory Administrator, Upper Rio Grande Workforce Development Board, 221 N. Kansas Street, Suite 1000, El Paso, Texas 79901; telephone: (915) 772-2002, ext. 239; fax: (915) 351-2790 or via email at guillermo.morales@urgjobs.org.

Request for Proposal (RFP) packets will be available beginning on Friday, July 8, 2011 at the above address. Packets may be picked up in person or requested in writing. The RFP will also be available on the

Workforce Board website at www.urgjobs.org under the Procurements section.

A Respondent's Conference is not scheduled for this procurement. The Workforce Board shall accept written, e-mailed, and faxed questions prior to, during, and up to the deadline for questions. Questions will not be accepted after 5:00 p.m. Mountain Daylight Time (MDT), July 21, 2011. Respondents are encouraged to check the Workforce Board's website daily for any changes to the RFP or any additional information regarding pertinent to the RFP. Should you encounter problems accessing the Workforce Board's Web Site, contact the Procurement and Contracts Manager immediately for assistance. Questions should be addressed to:

Workforce Solutions Upper Rio Grande

ATTN: Guillermo Morales II, Regulatory Administrator

221 N. Kansas Street, Suite 1000

El Paso, Texas 79901

Telephone (915) 772-2002, ext. 239

Fax: (915) 351-2790

E-mail: guillermo.morales@urgjobs.org

Other than as specified above, all members of the Upper Rio Grande Workforce Development Board of Directors, Workforce Board staff, authorized representatives or agents of the Workforce are precluded from entertaining or responding to questions concerning this RFP or the procurement process.

The Procurement and Contracts Manager (or Workforce Board representative) must physically receive responses to this RFP no later than: **5:00 p.m. MDT August 9, 2011**

Any response submitted after this time will not be accepted under this RFP.

Any reasonable delivery method, except facsimile or email, may be used. Use of a traceable delivery method, such as certified mail-return receipt requested, guaranteed express service, or hand delivery is recommended. Submissions post marked prior to the due date of August 9, 2011 but received after the due date of August 9, 2011 will not be considered.

TRD-201102610

Guillermo Morales II

Regulatory Administrator

Upper Rio Grande Workforce Development Board

Filed: July 8, 2011

Request for Proposals

The Upper Rio Grande Workforce Development Board dba/Workforce Solutions Upper Rio Grande announces the issuance of PY12-RFP-260-100: CHILD CARE SERVICES.

The authorized Workforce Board contact person for this procurement is Guillermo Morales II, Regulatory Administrator, Upper Rio Grande Workforce Development Board, 221 N. Kansas Street, Suite 1000, El Paso, Texas 79901; telephone: (915) 772-2002, ext. 239; fax: (915) 351-2790 or via email at guillermo.morales@urgjobs.org.

The Procurement and Contracts Management staff (or Workforce Board representative) must physically receive responses to this RFP no later than 5:00 p.m. August 12, 2011 Mountain Standard Time (MST). Any reasonable delivery method may be used. Use of a traceable delivery method, such as certified mail-return receipt requested,

guaranteed express service, or hand delivery is recommended. Submissions postmarked prior to the due date of August 12, 2011 but received after the due date of August 12, 2011 will not be considered. Request for Proposal packets will be available beginning on July 12, 2011 at the above address. Packets may be picked up in person or requested in writing. The RFP will also be available on the Workforce Board website at www.urgjobs.org under the Procurements section.

TRD-201102670

Joseph Sapien

Communications Specialist

Upper Rio Grande Workforce Development Board

Filed: July 13, 2011



Texas Water Development Board

Applications for July, 2011

Pursuant to Texas Water Code §6.195, the Texas Water Development Board provides notice of the following applications:

Project ID #73607, a request from the City of Burnet, 1001 West Buchanan, Suite 4, Burnet, Texas 78611, received February 2, 2011, for a loan in the amount of \$1,905,000, from the Clean Water State Revolving Fund-Disadvantaged Communities to finance wastewater system improvements, utilizing the pre-design funding option.

Project ID #73608, a request from the City of Keller, P.O. Box 770, Keller, Texas 76244, received February 7, 2011, for a loan in the amount of \$5,835,000, from the Clean Water State Revolving Fund to finance wastewater system improvements, utilizing the pre-design funding option.

TRD-201102655

Kenneth Petersen

General Counsel

Texas Water Development Board

Filed: July 12, 2011



How to Use the Texas Register

Information Available: The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 36 (2011) is cited as follows: 36 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "36 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 36 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Register* is available in an .html version as well as a .pdf (portable document

format) version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>.

The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*. If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION

Part 4. Office of the Secretary of State

Chapter 91. Texas Register

40 TAC §3.704.....950 (P)